



CITY OF BUFFALO
DEPARTMENT OF LAW

EXHIBIT

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**VIDEO DEPOSITION
LAUREN McDERMOTT**

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JAMES C. KISTNER,

Plaintiff,

- vs - Civil Action No.
18-cv-402

THE CITY OF BUFFALO,
c/o Corporation Counsel,
BYRON LOCKWOOD, individually and in
his capacity as Police Commissioner
of the Buffalo Police Department,
DANIEL DERENDA, individually and in his
capacity as Police Commissioner of the
Buffalo Police Department,
LAUREN McDERMOTT, individually and
in her capacity as a Buffalo Police Officer,
JENNY VELEZ, individually and in her
capacity as a Buffalo Police Officer,
KARL SCHULZ, individually and in his
capacity as a Buffalo Police Officer,
KYLE MORIARTY, individually and in his
capacity as a Buffalo Police Officer,
DAVID T. SANTANA, individually and in his
capacity as a Buffalo Police Officer,
JOHN DOE(S), individually and in his/their
capacity as a Buffalo Police Officer(s),

Defendants.

1 Video deposition of **LAUREN McDERMOTT**,
2 Defendant, taken pursuant to the Federal Rules of
3 Civil Procedure, in the offices of JACK W. HUNT &
4 ASSOCIATES, INC., 1120 Liberty Building, Buffalo,
5 New York, on February 19, 2020, commencing at
6 10:07 a.m., before ANNE T. BARONE, RPR, Notary
7 Public.

8

9 APPEARANCES: RUPP BAASE
10 PFALZGRAF & CUNNINGHAM, LLC,
11 By R. ANTHONY RUPP, III, ESQ.,
12 rupp@ruppbaase.com and
13 CHAD DAVENPORT, ESQ.,
14 davenport@ruppbaase.com,
15 1600 Liberty Building,
16 Buffalo, New York 14202,
17 (716) 854-3400,
18 Appearing for the Plaintiff.

14

15 TIMOTHY A. BALL, ESQ.,
16 Corporation Counsel,
17 By MAEVE E. HUGGINS, ESQ.,
18 Assistant Corporation Counsel,
19 1137 City Hall,
20 Buffalo, New York 14202,
21 (716) 851-4334,
22 mhuggins@city-buffalo.com,
23 Appearing for the Defendants.

20 PRESENT: JAMES KISTNER
21 JENNY VELEZ
22 PATRICK F. MORRIS, Videographer

10:04:28

10:04:28 1 **THE REPORTER:** Usual stipulations for
10:04:53 2 federal cases and read and sign?

10:04:56 3 **MS. HUGGINS:** 45 days to read and sign.

10:04:58 4 **THE REPORTER:** Okay.

10:05:00 5 **MR. RUPP:** No objection.

10:05:00 6 **THE REPORTER:** And Ms. Huggins will be
10:05:02 7 supplied?

10:05:04 8 **MR. RUPP:** Yes.

10:05:04 9 **THE REPORTER:** Thank you.

10:05:04 10

10:07:49 11 **L A U R E N M C D E R M O T T**, 1847 South Park
10:07:58 12 Avenue, Buffalo, New York 14220, after being duly
10:07:58 13 called and sworn, testified as follows:

10:08:02 14

10:08:02 15 **EXAMINATION BY MR. RUPP:**

10:08:02 16

10:08:03 17 **Q.** Good morning, Ms. McDermott.

10:08:05 18 **A.** Good morning.

10:08:05 19 **Q.** My name's Tony Rupp. I don't think
10:08:07 20 we've met before today. Is that fair?

10:08:08 21 **A.** Yeah, I don't think so.

10:08:09 22 **Q.** Okay. You're here for a deposition in
10:08:11 23 the case of James Kistner versus the City of

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10:08:14 1 Buffalo. Before we get going with my questions
10:08:16 2 this morning, have you ever been deposed and placed
10:08:20 3 under oath and given testimony before?

10:08:21 4 **A.** I've never been deposed.

10:08:22 5 **Q.** Okay. You've given testimony in court
10:08:25 6 trials then?

10:08:25 7 **A.** Yes.

10:08:25 8 **Q.** All right. The deposition process is
10:08:27 9 a little bit different, so I'll just go over
10:08:29 10 a couple of ground rules real quick.

10:08:31 11 As you can see, we have a stenographer here
10:08:33 12 taking down my questions and your answers
10:08:35 13 mechanically. It's not a magnetic recording. So
10:08:38 14 for that reason, it's very important that we not
10:08:40 15 speak over each other.

10:08:42 16 I'll try to give you an opportunity to
10:08:43 17 finish your answer before I ask my next question,
10:08:45 18 and I would ask kindly that you wait until I've
10:08:48 19 finished asking my full question before you begin
10:08:51 20 responding to it. Is that fair?

10:08:52 21 **A.** Yes.

10:08:52 22 **Q.** Okay. And for the same reason -- and
10:08:53 23 I see you're doing it already -- it's important

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10:08:55 1 that you give me a verbal or an audible response so
10:08:58 2 that we can have the court reporter take that down
10:09:00 3 for us. Will you do that for me?

10:09:02 4 **A.** Yes.

10:09:02 5 **Q.** If you forget, I'll try to remind you.

10:09:05 6 And if I ask you any questions this morning
10:09:07 7 that you don't understand, please ask me to repeat
10:09:11 8 the question, have it read back, rephrase it,
10:09:13 9 whatever. It's important that you understand the
10:09:15 10 question.

10:09:15 11 Will you do that for me if you don't
10:09:16 12 understand?

10:09:17 13 **A.** Yes.

10:09:17 14 **Q.** Okay. Ms. McDermott, can I have your
10:09:20 15 date of birth, please?

10:09:21 16 **A.** █/89.

10:09:23 17 **Q.** All right. And where were you born?

10:09:24 18 **A.** Buffalo.

10:09:25 19 **Q.** All right. And did you go to
10:09:27 20 high school here?

10:09:28 21 **A.** Yes.

10:09:28 22 **Q.** Where did you attend?

10:09:29 23 **A.** Nichols.

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10:09:30 1 **Q.** And what year did you graduate?

10:09:31 2 **A.** 2007.

10:09:33 3 **Q.** College?

10:09:34 4 **A.** Canisius.

10:09:35 5 **Q.** And what year did you graduate?

10:09:38 6 **A.** 2010.

10:09:39 7 **Q.** What degree?

10:09:40 8 **A.** Business degree.

10:09:42 9 **Q.** Do you have any education beyond

10:09:45 10 college?

10:09:45 11 **A.** No.

10:09:46 12 **Q.** All right. And what is your current

10:09:48 13 occupation?

10:09:49 14 **A.** I'm a detective with the Buffalo Police

10:09:52 15 Department.

10:09:52 16 **Q.** How long have you been with the Buffalo

10:09:54 17 Police Department?

10:09:54 18 **A.** Seven and a half years.

10:09:57 19 **Q.** All right. And how long have you been

10:09:58 20 a detective?

10:09:59 21 **A.** Six months.

10:10:00 22 **Q.** What was your position before that?

10:10:02 23 **A.** Police officer.

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10:10:04 1 **Q.** For how long?

10:10:04 2 **A.** Seven years.

10:10:06 3 **Q.** All right. So those are the only two

10:10:08 4 positions you've held with the BPD?

10:10:11 5 **A.** Yes.

10:10:11 6 **Q.** All right. And what was your actual

10:10:13 7 start date for the BPD?

10:10:15 8 **A.** August 3rd, 2012.

10:10:20 9 **Q.** And has that been full-time employment?

10:10:22 10 **A.** Yes.

10:10:22 11 **Q.** Have you had any periods of leave or

10:10:25 12 being off for an extended period?

10:10:28 13 **A.** No.

10:10:29 14 **Q.** Are you assigned to a particular

10:10:31 15 district?

10:10:32 16 **A.** Yes.

10:10:32 17 **Q.** Which one?

10:10:32 18 **A.** A District.

10:10:33 19 **Q.** How long have you been with A District?

10:10:35 20 **A.** Six months.

10:10:36 21 **Q.** Okay. Before that, what district were

10:10:39 22 you with?

10:10:39 23 **A.** C.

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10:10:40 1 **Q.** Was that for the full time that you
10:10:41 2 were a police officer before that?

10:10:43 3 **A.** Yes.

10:10:43 4 **Q.** Okay. So you've only been with C and
10:10:45 5 A, never -- never with B?

10:10:47 6 **A.** Correct.

10:10:47 7 **Q.** Okay. Did you attend the police
10:10:51 8 academy?

10:10:51 9 **A.** Yes.

10:10:52 10 **Q.** Where did you go?

10:10:52 11 **A.** ECC.

10:10:54 12 **Q.** And when did you take that program?

10:10:57 13 **A.** From August 3rd, 2012 -- or, well, it
10:11:01 14 was August 6th was our start date, to December,
10:11:05 15 I think it was like 21st or something like that.
10:11:08 16 Graduation.

10:11:08 17 **Q.** Okay. And -- and who put on that
10:11:11 18 program?

10:11:11 19 **A.** I think it's just the Erie County Law
10:11:14 20 Enforcement Academy.

10:11:15 21 **Q.** Okay. I take it you passed?

10:11:21 22 **A.** Yes.

10:11:21 23 **Q.** Okay. And did there come a time when

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10:11:23 1 you were sworn in?

10:11:24 2 **A.** Yes. That was on August 3rd.

10:11:26 3 **Q.** That was August 3rd --

10:11:27 4 **A.** Yes.

10:11:27 5 **Q.** -- you were sworn in?

10:11:28 6 And you -- you began your training on
10:11:30 7 August 6th?

10:11:31 8 **A.** Yes.

10:11:31 9 **Q.** Okay. And --

10:11:33 10 **A.** Friday and a Monday.

10:11:34 11 **Q.** Right. And that was all 2012.

10:11:35 12 **A.** Yes.

10:11:36 13 **Q.** All right. And when you first became
10:11:38 14 a -- a police officer, following -- I assume
10:11:42 15 following your -- your graduation was the first
10:11:44 16 time you were out in the field?

10:11:45 17 **A.** Yes.

10:11:45 18 **Q.** Okay. So between August and December,
10:11:49 19 whatever the date of the graduation was in 2012,
10:11:52 20 you were purely in training; you weren't deployed
10:11:55 21 into the field at all.

10:11:56 22 **A.** Correct.

10:11:56 23 **Q.** Okay. And then after you graduated and

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10:11:58 1 you were assigned to C District, did you become
10:12:02 2 a patrol officer?

10:12:05 3 **A.** Well, I had field training.

10:12:06 4 **Q.** Okay.

10:12:06 5 **A.** Yes, I was a patrol officer, but I was
10:12:09 6 with a field training officer.

10:12:10 7 **Q.** Okay. And I was going to ask you that,
10:12:12 8 so there was sort of a little bit of an
10:12:13 9 apprenticeship?

10:12:15 10 **A.** 16 weeks.

10:12:15 11 **Q.** Okay. 16 weeks --

10:12:17 12 **A.** That you ride with a senior field
10:12:18 13 training officer.

10:12:19 14 **Q.** And whom was your field training
10:12:22 15 officer?

10:12:22 16 **A.** I had a couple different ones --

10:12:23 17 **Q.** Okay.

10:12:24 18 **A.** -- we rotated through.

10:12:25 19 Lavonne Handsor.

10:12:27 20 **Q.** Can you spell the first and last name
10:12:28 21 on that?

10:12:28 22 **A.** L-A-V-O-N-N-E, I believe.

10:12:32 23 **Q.** Okay.

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10:12:32 1 **A.** H-A-N-D-S-O-R.

10:12:35 2 **Q.** Okay.

10:12:36 3 **A.** Darryl Williams.

10:12:39 4 **Q.** Okay.

10:12:40 5 **A.** And Alphonso Wright. A-L-P-H, yeah.

10:12:45 6 **Q.** And is that Wright, W --

10:12:46 7 **A.** -- R-I-G-H-T.

10:12:48 8 **Q.** Okay. And they were all more -- more

10:12:51 9 experienced officers?

10:12:52 10 **A.** Yes.

10:12:52 11 **Q.** Okay. And was your training with them

10:12:56 12 primarily, you know, patrol based?

10:12:58 13 **A.** Yes.

10:12:58 14 **Q.** Like in a -- in a patrol SUV?

10:13:00 15 **A.** Yes.

10:13:00 16 **Q.** Or a squad car, as they call them?

10:13:02 17 **A.** Yeah.

10:13:03 18 **Q.** What do you refer to those as?

10:13:04 19 I'm probably going to reference them over

10:13:06 20 the course of the deposition. Is that -- is that

10:13:08 21 a police SUV?

10:13:09 22 **A.** We usually say patrol vehicle.

10:13:11 23 **Q.** Patrol vehicle?

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10:13:11 1 **THE WITNESS:** Yes.

10:13:11 2 (Discussion off the record.)

10:13:20 3 **BY MR. RUPP:**

10:13:20 4 **Q.** Okay. So you just call them patrol
10:13:27 5 vehicles?

10:13:27 6 **A.** Yes.

10:13:27 7 **Q.** All right. So with each of the more
10:13:29 8 senior officers that you mentioned, did you ride in
10:13:31 9 a patrol vehicle with them?

10:13:32 10 **A.** Yes.

10:13:33 11 **Q.** And did you respond to calls?

10:13:34 12 **A.** Yes.

10:13:34 13 **Q.** And did you learn and train under them
10:13:38 14 for those 16 weeks?

10:13:39 15 **A.** Yes.

10:13:39 16 **Q.** All right. And after those 16 weeks
10:13:41 17 were completed -- well, let me ask you this: You
10:13:45 18 have a log of training that you took that was
10:13:48 19 produced to us in discovery.

10:13:51 20 Was that training all done in those weeks
10:13:54 21 between August and December of 2012, or did you
10:13:58 22 have additional training after that time?

10:14:01 23 **A.** I would have to see the document.

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10:14:03 1 Q. Okay. I'm going to try to find that.

10:14:07 2 I don't know if I put it in order.

10:14:09 3 So you have had a number of different

10:14:11 4 training modules, is that correct, or training

10:14:14 5 courses that you took?

10:14:15 6 A. Throughout our career we continue

10:14:18 7 training.

10:14:18 8 Q. Okay. And that was going to be my

10:14:19 9 question. So since you became an officer, you've

10:14:22 10 had additional training; is that right?

10:14:23 11 A. Yes.

10:14:23 12 MR. RUPP: Okay. Let me see if we can get

10:14:27 13 this marked, and I'll show you what I'm talking

10:14:30 14 about.

10:14:31 15 Thank you, Anne.

16 The following was marked for Identification:

17 EXH. 14 Buffalo Police Academy

18 training record

19 BY MR. RUPP:

10:15:26 20 Q. All right, Ms. McDermott, let me show

10:15:29 21 you a copy of Exhibit 14, which purports to be your

10:15:32 22 Buffalo Police Academy training record.

10:15:36 23 Do you see that title at the top of the

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10:15:37 1 page?

10:15:38 2 **A.** Yes.

10:15:38 3 **Q.** But, in fact, you had already graduated
10:15:41 4 from the ECC program by the time the training
10:15:45 5 that's listed on this begins; is that right?

10:15:48 6 **A.** Yes.

10:15:48 7 **Q.** Okay. So is the training that you
10:15:51 8 receive once you become an actual officer in the
10:15:55 9 field given through something known as the Buffalo
10:15:58 10 Police Academy?

10:15:59 11 **A.** Yes. We have -- there's ECC Training
10:16:01 12 Academy and then there's a Buffalo Police Academy
10:16:05 13 Division.

10:16:05 14 **Q.** Okay.

10:16:05 15 **A.** And that's where -- what all of this
10:16:07 16 would be.

10:16:07 17 **Q.** All right. So let's just pick the one
10:16:09 18 at the top. 2013 Glock qualification, which took
10:16:12 19 place on January 22nd, 2013, which was after ECC;
10:16:16 20 is that right?

10:16:17 21 **A.** Yes.

10:16:17 22 **Q.** Indicates that you took and completed
10:16:18 23 that course; is that right?

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10:16:19 1 **A.** Yes.

10:16:20 2 **Q.** And was that something that would
10:16:23 3 happen, you know, during a regularly scheduled
10:16:26 4 shift that you would be scheduled to go to the
10:16:28 5 police academy to do that?

10:16:29 6 **A.** It depends. Glock qualification is
10:16:33 7 qualifying with our firearm.

10:16:34 8 **Q.** Right.

10:16:35 9 **A.** So it would be during -- it would be at
10:16:37 10 the range. So, generally, it would be during the
10:16:38 11 shift but not necessarily.

10:16:42 12 **Q.** Okay. So I guess what I'm getting at
10:16:44 13 is: Was this training in addition to like your
10:16:46 14 regular, I assume, eight-hour shift or --

10:16:48 15 **A.** Ten-hour shifts.

10:16:49 16 **Q.** -- ten-hour shift, or could it
10:16:51 17 happen -- mostly happen during your shift?

10:16:53 18 **A.** It -- it is usually during the shift.

10:16:55 19 **Q.** Okay. And so the list of courses that
10:17:00 20 you took at ECC are not on here; is that right?

10:17:03 21 **A.** Correct.

10:17:03 22 **Q.** So if we wanted to see those, we would
10:17:05 23 have to get those records; is that right?

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10:17:09 1 **A.** Yes.

10:17:09 2 **Q.** Okay. But with respect to the training
10:17:12 3 that you've received through the Buffalo Police
10:17:18 4 Academy postECC, does this appear to be a full
10:17:23 5 listing of your training at least through the
10:17:27 6 date -- the last date that's referenced there,
10:17:30 7 February 20, 2019?

10:17:33 8 **A.** Yes.

10:17:33 9 **Q.** Okay. And I note that you took
10:17:36 10 training -- there's training listed here for Tahoe
10:17:41 11 on May 2, 2014. What is that training?

10:17:45 12 **A.** We had previously had Crown Vics, and
10:17:48 13 we had just gotten a fleet of Tahoes, so we all had
10:17:52 14 to be trained on driving those Tahoes.

10:17:54 15 **Q.** All right. And you received that
10:17:56 16 training on May 2nd of 2014?

10:17:58 17 **A.** Yes.

10:17:59 18 **Q.** And completed that course?

10:18:01 19 **A.** Yes.

10:18:01 20 **Q.** And that was a four-hour course?

10:18:02 21 **A.** Yes.

10:18:02 22 **Q.** All right. And on the date of the
10:18:04 23 incident involving Mr. Kistner, January 1st, 2017,

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10:18:09 1 were you driving a Tahoe?

10:18:10 2 **A.** Yes.

10:18:10 3 **Q.** All right. And was that the same type
10:18:11 4 or model of Tahoe that you had trained on back in
10:18:16 5 2014?

10:18:16 6 **A.** I believe so.

10:18:17 7 **Q.** All right. And did you take any other
10:18:19 8 training on the operation -- the safe and lawful
10:18:22 9 operation of a Tahoe after May of 2014 and before
10:18:29 10 January 1st of 2017?

10:18:32 11 **A.** I don't remember.

10:18:33 12 **Q.** Okay. Well, if you had, would it be
10:18:35 13 referenced on the Buffalo Police Academy training
10:18:38 14 record that's been marked as Exhibit 14?

10:18:40 15 **A.** I believe so.

10:18:40 16 **Q.** Okay. Do you see anything there that
10:18:43 17 references either Tahoe in particular or any type
10:18:46 18 of driving training that you would have taken
10:18:51 19 between those two dates that I just gave you?

10:18:53 20 **A.** I do not.

10:18:54 21 **Q.** Okay. And are there any other
10:18:55 22 references to any type of driver training anywhere
10:18:59 23 on Exhibit 14 that you can see?

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10:19:10 1 **A.** Not that I can see.

10:19:11 2 **Q.** All right. Did you take driver
10:19:12 3 training operating a police -- a patrol vehicle
10:19:17 4 while you were at the ECC program?

10:19:18 5 **A.** Yes.

10:19:18 6 **Q.** Okay. And what type of vehicles did
10:19:20 7 you train on there? Were those the Crown Vics?

10:19:22 8 **A.** Yes.

10:19:23 9 **Q.** Okay. And when do -- did the Tahoes
10:19:29 10 first come into the police department where you
10:19:31 11 would have been at C District to either ride in one
10:19:33 12 or operate one?

10:19:33 13 **A.** I don't know the exact date.

10:19:35 14 **Q.** Did you start to drive one before you
10:19:37 15 had the Tahoe training, or was that required before
10:19:39 16 you could operate the Tahoe?

10:19:40 17 **A.** I don't remember.

10:19:41 18 **Q.** Okay. All right. And since -- since
10:19:49 19 2014, you haven't had any updated course -- courses
10:19:53 20 on operation of a patrol vehicle, to the best of
10:19:56 21 your knowledge?

10:19:57 22 **A.** To the best of my knowledge, no.

10:19:59 23 **Q.** Okay. Fair enough.

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10:20:01 1 And, now, I see there's a reference, on the
10:20:05 2 second page of Exhibit 14, August 4, 2016, to law
10:20:09 3 enforcement and mental health. Was that a
10:20:12 4 three-hour course that you took on that date?

10:20:14 5 **A.** Yes.

10:20:14 6 **Q.** And you completed it?

10:20:16 7 **A.** Yes.

10:20:16 8 **Q.** All right. And had you also taken
10:20:18 9 a similar course as part of your ECC training?

10:20:22 10 **A.** Yes. I just don't know what it was
10:20:24 11 called.

10:20:24 12 **Q.** Sure.

10:20:26 13 Do you see anything else on the list of
10:20:30 14 training courses that's marked as Exhibit 14 from
10:20:34 15 the Buffalo Police Academy that relates to law
10:20:38 16 enforcement and mental health or just the mental
10:20:41 17 health part of it?

10:20:42 18 **MS. HUGGINS:** Form. You can answer.

10:20:43 19 **THE WITNESS:** I took CIT crisis services
10:20:47 20 training in December of '18.

10:20:48 21 **BY MR. RUPP:**

10:20:49 22 **Q.** And what is CIT?

10:20:50 23 **A.** It is -- gosh. I'm drawing a blank.

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10:21:01 1 Sorry. I'm drawing a blank.

10:21:02 2 Q. That's okay. That's okay.

10:21:03 3 A. It's -- has to do with mental health.

10:21:07 4 People -- dealing with people with mental health
10:21:08 5 issues.

10:21:09 6 Q. Fair enough.

10:21:10 7 And was there any other --

10:21:11 8 A. Crisis intervention training.

10:21:13 9 I apologize.

10:21:14 10 Q. That's okay. Thanks for coming up with
10:21:16 11 it.

10:21:16 12 Anything prior to January '17 -- January 1
10:21:22 13 of 2017, aside from the law enforcement and mental
10:21:24 14 health that's referenced there, that deals in any
10:21:26 15 way with -- with mental health on the Exhibit 14?

10:21:30 16 A. No.

10:21:30 17 Q. Okay. All right. So as far as you
10:21:34 18 know, as of January 1, 2017, you were -- you were
10:21:37 19 current and up to date in all of your required
10:21:39 20 training?

10:21:39 21 A. Yes.

10:21:39 22 Q. Okay. All right. Now, let's -- I want
10:21:50 23 to go back into the -- I'm going to direct my

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10:21:53 1 questions, I think, to the latter part of 2016.

10:21:56 2 I want to ask you some questions about that
10:22:00 3 period leading up to January 1st of 2017. So the
10:22:04 4 last six months of 2016, did you -- did you have
10:22:11 5 a -- did you have a partner?

10:22:13 6 How did -- how did the BPD work, in at least
10:22:15 7 C District, in terms of whether you were -- were
10:22:19 8 singularly operating a patrol vehicle or you had
10:22:21 9 a partner?

10:22:22 10 **A.** Buffalo's technically single-person
10:22:26 11 cars, but we're so short on vehicles that we --
10:22:30 12 I would normally double up and ride with another
10:22:33 13 officer.

10:22:33 14 **Q.** All right. And did you have
10:22:34 15 a particular officer that you would normally
10:22:37 16 double up with ride with?

10:22:38 17 **A.** Yes.

10:22:38 18 **Q.** And who was that person?

10:22:39 19 **A.** Jenny Velez.

10:22:41 20 **Q.** And is she here today?

10:22:42 21 **A.** Yes.

10:22:43 22 **Q.** Okay. And when did you essentially
10:22:46 23 first start doubling up with her?

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10:22:48 1 And I don't mean the very first time you --
10:22:50 2 you rode with her, but when did you routinely start
10:22:52 3 doubling up with her as your partner in the single
10:22:56 4 patrol vehicle?

10:22:58 5 **A.** I believe that year I went to day shift.
10:23:04 6 I don't even remember the month.

10:23:07 7 **Q.** Had you been night shift before or
10:23:09 8 a different shift?

10:23:10 9 **A.** I was nights, then afternoons, then
10:23:12 10 days.

10:23:13 11 **Q.** Okay. And you told me the shift is ten
10:23:15 12 hours, so a day shift starts when and ends when?

10:23:18 13 **A.** 6 a.m. to 4 p.m.

10:23:20 14 **Q.** Okay. And so in the latter half or the
10:23:23 15 last six months of 2016, were you day shift at that
10:23:28 16 time?

10:23:28 17 **A.** I believe so. I'm trying to remember
10:23:30 18 the exact, because I was on -- I was only on
10:23:35 19 afternoons for, at the time, like maybe seven
10:23:37 20 months. I just don't remember the exact --

10:23:40 21 **Q.** Transition date?

10:23:41 22 **A.** Yeah. The date frames.

10:23:42 23 **Q.** Okay. Fair enough.

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10:23:43 1 But as of January 1, 2017, that was a day
10:23:47 2 shift assignment; is that right?

10:23:48 3 **A.** Yes. Yes.

10:23:49 4 **Q.** Okay. And as of that point, you had
10:23:52 5 been, as you put it, doubling up with then-Officer
10:23:57 6 Velez in your patrol vehicle; is that right? Or in
10:24:00 7 a patrol vehicle?

10:24:00 8 **A.** A patrol vehicle.

10:24:03 9 **Q.** Okay. And that -- I guess I'll ask
10:24:04 10 that next. Did you have a particular patrol
10:24:06 11 vehicle that was assigned to you, or did you take
10:24:07 12 what the fleet had available?

10:24:09 13 **A.** It -- it would depend. I mean, it --
10:24:14 14 what they had available. Sometimes we would take
10:24:15 15 the same car, but they go down for maintenance
10:24:18 16 routinely. So if it was available, we generally
10:24:21 17 took the same car, mostly because we kept it, you
10:24:27 18 know, clean, and it was -- it was -- you know, but
10:24:30 19 it would depend.

10:24:31 20 **Q.** Okay. And the -- the cars, if I -- if
10:24:35 21 I recall correctly, are assigned by district; is
10:24:37 22 that right?

10:24:37 23 **A.** Yes.

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10:24:37 1 **Q.** Okay. So, and where is -- where is

10:24:41 2 A District -- or C District located?

10:24:43 3 **A.** 693 East Ferry Street.

10:24:45 4 **Q.** Okay. And is that where you would
10:24:47 5 report in the morning?

10:24:48 6 **A.** Yes.

10:24:49 7 **Q.** And what time would you -- would you
10:24:52 8 arrive, typically, at 693 East Ferry either to
10:24:56 9 begin your shift or to prepare to begin your shift?

10:24:58 10 **A.** Prior to 6 a.m. We have to be ready to
10:25:05 11 go at 6. So usually 10 or 5 to.

10:25:10 12 **Q.** Okay. And would you receive any type
10:25:12 13 of a briefing at that time, or was it just kind of
10:25:15 14 get ready and, you know, be -- be ready to be
10:25:18 15 dispatched at 6 a.m.?

10:25:19 16 **A.** Briefing.

10:25:20 17 **Q.** Okay. And who would provide the
10:25:21 18 briefing?

10:25:21 19 **A.** The lieutenant.

10:25:22 20 **Q.** Okay. And as of -- well, I'll go to
10:25:26 21 January 1st of 2017. Who -- who was the lieutenant
10:25:28 22 at C District at that time?

10:25:30 23 **A.** That day, it was Lieutenant McHugh.

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10:25:32 1 **Q.** Okay. And how do you spell McHugh?

10:25:33 2 **A.** M-C-H-U-G-H.

10:25:37 3 **Q.** And had Lieutenant McHugh -- I know

10:25:40 4 that January 1st of 2017 was the beginning of a new

10:25:43 5 year, so were there changes at -- at C District

10:25:46 6 starting on that day versus the preceding, you

10:25:51 7 know, month of December 2016?

10:25:52 8 **A.** No. It was our double-up day, which

10:25:55 9 means that both platoons work on the same day.

10:25:59 10 It's every 15-day cycle, a double-up day

10:26:03 11 occurs. So at the time, he was the lieutenant of

10:26:06 12 the platoon opposite of me.

10:26:08 13 **Q.** Okay.

10:26:09 14 **A.** But he was the lieutenant working that

10:26:10 15 day.

10:26:11 16 **Q.** All right. So tell me about platoons

10:26:13 17 at the district. How -- how does that work? How

10:26:17 18 does a platoon work?

10:26:18 19 **A.** So there's two different sides of who's

10:26:22 20 working. We generally call them sides. That's how

10:26:25 21 I refer to them.

10:26:25 22 **Q.** Okay.

10:26:26 23 **A.** So it would be who's working when we're

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10:26:29 1 working and then who's working when we're on our
10:26:33 2 days off.

10:26:33 3 Q. Okay. And so, obviously --

10:26:35 4 A. There's an A side and a B side.

10:26:36 5 Q. So, obviously, there's coverage 365
10:26:39 6 days a year.

10:26:40 7 A. Correct.

10:26:40 8 Q. Out of each district.

10:26:41 9 A. Yes.

10:26:41 10 Q. And so you're -- you're mirrored up
10:26:43 11 with a platoon that works when you're not working
10:26:45 12 and you work when they're not working.

10:26:47 13 A. Correct.

10:26:47 14 Q. All right. And that's by shift as
10:26:49 15 well, right?

10:26:49 16 A. Yes.

10:26:49 17 Q. Now, do you actually have like
10:26:52 18 a counterpart officer on your platoon that -- or
10:26:53 19 was it -- was it not scheduled down to that
10:26:56 20 molecular level?

10:26:57 21 In other words, did they just put people on
10:26:59 22 day shift, or did you actually have somebody who
10:27:01 23 worked opposite you every time you were off and you

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10:27:03 1 worked opposite he or -- him or her every time --

10:27:07 2 **A.** Not in -- it's not quite down to that
10:27:10 3 level.

10:27:10 4 **Q.** Okay. So, but by platoon, they'll
10:27:14 5 schedule somebody on your shift when you're off.

10:27:16 6 **A.** Correct.

10:27:16 7 **Q.** Okay. All right. And so Lieutenant
10:27:21 8 McHugh was typically -- was the lieutenant for the
10:27:23 9 other platoon, but on this double-up day, he was
10:27:25 10 the lieutenant for the entire district; is that
10:27:29 11 right?

10:27:29 12 **A.** Yes.

10:27:29 13 **Q.** During your day shift.

10:27:32 14 **A.** Yes.

10:27:32 15 **Q.** Okay. And I assume there's
10:27:33 16 a lieutenant on duty for each one of the shifts.

10:27:35 17 **A.** Yes.

10:27:35 18 **Q.** All right. You were a -- what was your
10:27:39 19 title? You were --

10:27:40 20 **A.** Police officer.

10:27:41 21 **Q.** You were a police officer at that time.
10:27:45 22 Were there any other levels of supervision
10:27:47 23 between you and Lieutenant McHugh?

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10:27:50 1 **A.** No.

10:27:50 2 **Q.** Okay. Are there any levels of

10:27:54 3 supervision above Lieutenant McHugh at the

10:27:57 4 district?

10:27:57 5 **A.** Yes.

10:27:57 6 **Q.** And who would be, at the district,

10:27:59 7 ahead of Lieutenant McHugh?

10:28:00 8 **A.** Captain.

10:28:01 9 **Q.** Okay. Was there always a captain on

10:28:03 10 duty?

10:28:03 11 **A.** No.

10:28:04 12 **Q.** Okay. What would determine whether

10:28:06 13 a captain would be present at the district?

10:28:10 14 **A.** Depending what their shifts are.

10:28:12 15 **Q.** Okay. But they were assigned --

10:28:16 16 they're district captains, not BPD at large

10:28:19 17 captains.

10:28:19 18 **A.** They're district captains, not shift

10:28:23 19 captains.

10:28:23 20 **Q.** Okay. Are -- is there such a thing as

10:28:26 21 a shift captain?

10:28:28 22 **A.** No.

10:28:28 23 **Q.** Okay. All right. So as between you

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10:28:31 1 and Officer Velez at the time, January 1st of 2017,
10:28:35 2 which one of you had been with the police department
10:28:39 3 longer?

10:28:39 4 **A.** I had.

10:28:40 5 **Q.** Okay. And do you know how long you had
10:28:42 6 been with the department -- we can do the math.

10:28:46 7 As of January 1, 2017, you had been with the
10:28:52 8 department for -- well, not quite five years; is
10:28:52 9 that right?

10:29:00 10 **A.** Yes.

10:29:00 11 **Q.** Okay. And how long had Officer Velez
10:29:04 12 been with the department?

10:29:05 13 **A.** I believe she's the academy class one
10:29:07 14 or two after me.

10:29:08 15 **Q.** Okay.

10:29:08 16 **A.** So six months to a year difference,
10:29:11 17 I believe.

10:29:11 18 **Q.** So how was it that the two of you
10:29:14 19 were -- were paired up when there were not enough
10:29:18 20 patrol vehicles and you were doing the -- the
10:29:23 21 double-person riding?

10:29:23 22 **MS. HUGGINS:** Form. You can answer.

10:29:24 23 **MR. RUPP:** Strike it.

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10:29:25 1 How was it that you were paired up with --
10:29:28 2 with Officer Velez?

10:29:30 3 **THE WITNESS:** By choice.

10:29:30 4 **BY MR. RUPP:**

10:29:30 5 **Q.** Okay. You got to pick?

10:29:31 6 **A.** Yes.

10:29:31 7 **Q.** Was there any effort to match, you
10:29:34 8 know, lesser experienced officers with more
10:29:36 9 experienced officers when you --

10:29:37 10 **A.** No.

10:29:37 11 **Q.** -- doubled up like that?

10:29:38 12 **A.** No.

10:29:39 13 **Q.** Okay. And how was it that you and
10:29:41 14 Officer Velez -- I assume it was mutual -- chose
10:29:43 15 each other?

10:29:45 16 **A.** We were friends. I mean --

10:29:48 17 **Q.** Did you become -- were you friends
10:29:49 18 before you joined the police department or --

10:29:51 19 **A.** No. We met on the job.

10:29:52 20 **Q.** Okay. And do you remain friends with
10:29:56 21 her to this day?

10:29:56 22 **A.** Yes.

10:29:57 23 **Q.** All right. And do you still -- you're

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10:29:58 1 a detective now, so you're not riding patrol.

10:30:01 2 **A.** Correct.

10:30:01 3 **Q.** Okay. As is Ms. Velez?

10:30:05 4 **A.** She's a lieutenant.

10:30:06 5 **Q.** She's a lieutenant now. Okay. So you

10:30:07 6 don't ride together anymore.

10:30:10 7 **A.** Correct.

10:30:11 8 **Q.** Okay. And you're still with -- with

10:30:13 9 C District?

10:30:14 10 **A.** A District.

10:30:15 11 **Q.** I'm sorry. A District is where you are

10:30:17 12 now.

10:30:19 13 Is she -- what district is she with now?

10:30:21 14 **A.** C.

10:30:21 15 **Q.** Okay. She remained with C.

10:30:24 16 All right. Prior to your deposition here

10:30:33 17 today, Ms. McDermott, did you review any

10:30:34 18 documentation at all?

10:30:35 19 **A.** Yes.

10:30:35 20 **Q.** All right. What did you review?

10:30:39 21 **A.** There's a lot of documents that we

10:30:41 22 reviewed.

10:30:42 23 **Q.** When did you do that review?

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10:30:43 1 **A.** Yesterday.

10:30:44 2 **Q.** Okay. And how long -- where did that
10:30:46 3 take place?

10:30:47 4 **A.** Maeve's office.

10:30:49 5 **Q.** Okay. And approximately how long did
10:30:51 6 you -- did your review of documents take place?

10:30:54 7 **A.** A couple hours.

10:30:55 8 **Q.** Okay. And -- and what in particular
10:30:59 9 did you review?

10:31:00 10 Did you review any documents that you signed
10:31:01 11 or arrest records relative to the incident
10:31:05 12 involving Mr. Kistner?

10:31:06 13 **A.** Yes. We reviewed the arrest records.

10:31:08 14 **Q.** Okay. What else did you review?

10:31:10 15 **A.** Video.

10:31:11 16 **Q.** All right. Is that video --
10:31:13 17 surveillance video of the incident?

10:31:14 18 **A.** Yes.

10:31:14 19 **Q.** That was produced by our office?

10:31:16 20 **A.** Yes.

10:31:16 21 **Q.** Okay. Had you seen that previously?

10:31:18 22 **A.** Yes.

10:31:18 23 **Q.** And when -- when is the first time you

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10:31:21 1 had seen that surveillance video?

10:31:24 2 **A.** I believe it was after we were served
10:31:28 3 with the -- or I was served with the paperwork for
10:31:30 4 the lawsuit.

10:31:33 5 **Q.** At any time prior to being served with
10:31:35 6 the lawsuit, had you been contacted by anyone from
10:31:39 7 internal affairs at the Buffalo Police Department?

10:31:42 8 **A.** No.

10:31:44 9 **Q.** Are -- were you ever aware of any
10:31:47 10 internal affairs investigations --

10:31:48 11 **A.** Excuse me.

10:31:49 12 **Q.** -- relative to the arrest of
10:31:51 13 Mr. Kistner on -- and the episode on January 1 of
10:31:56 14 2017?

10:31:56 15 **A.** No.

10:31:57 16 **Q.** Are you aware of one now?

10:31:58 17 **A.** No.

10:31:58 18 **Q.** Have you ever been contacted by
10:32:01 19 internal affairs?

10:32:02 20 **A.** No.

10:32:02 21 **Q.** Okay. And you're not -- you're not
10:32:05 22 aware of whether they have an open investigation
10:32:07 23 or -- or have never opened one at this time.

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10:32:09 1 **A.** I'm not aware.

10:32:10 2 **MS. HUGGINS:** Form.

10:32:10 3 **BY MR. RUPP:**

10:32:10 4 **Q.** Okay. Have you ever been disciplined
10:32:22 5 for any reason as a police officer or a police
10:32:24 6 detective?

10:32:24 7 **MS. HUGGINS:** Form, and a 50-A objection, to
10:32:27 8 the extent it applies. You may answer.

10:32:30 9 **THE WITNESS:** Can you define discipline?

10:32:32 10 **BY MR. RUPP:**

10:32:33 11 **Q.** Well, any type of I guess black mark in
10:32:35 12 your -- in your record where you were reprimanded,
10:32:38 13 where you were censured, where you were disciplined
10:32:40 14 in any way?

10:32:42 15 **A.** Not anything that would be like a
10:32:45 16 reprimand or a suspension, but I guess if you were
10:32:50 17 to say disciplined in any way, I don't know if
10:32:52 18 I would use the word disciplined, but I've had to
10:32:57 19 speak with, say, a lieutenant or a captain
10:33:00 20 regarding an instance on a call.

10:33:06 21 **Q.** Okay. And approximately how many times
10:33:08 22 have you had to do that?

10:33:11 23 **A.** Not very many, but I couldn't -- I

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10:33:15 1 couldn't say.

10:33:15 2 Q. All right. So nothing that resulted in
10:33:17 3 any type of suspension?

10:33:18 4 A. No.

10:33:18 5 Q. Nothing that resulted in any type of
10:33:21 6 official reprimand?

10:33:22 7 A. Correct.

10:33:22 8 Q. Okay. And nothing that resulted in
10:33:24 9 anything in your -- in your personal personnel file
10:33:27 10 that would be considered a black mark?

10:33:29 11 A. Correct.

10:33:29 12 MS. HUGGINS: Form objection and a 50-A, to
10:33:32 13 the extent that that applies.

10:33:35 14 BY MR. RUPP:

10:33:36 15 Q. All right. When you received your
10:33:42 16 training on the Tahoe -- well, let's go back to
10:33:45 17 ECC. When you received your training on the
10:33:47 18 Crown Vic and patrol vehicles generally, what kind
10:33:49 19 of training was that? What did you receive?

10:33:52 20 A. I believe it was a week-long training.
10:33:55 21 It was out at the airport, and it was different
10:34:00 22 types of driving, maneuvering. You know, we do
10:34:06 23 have to drive fast sometimes. Driving fast,

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10:34:10 1 driving, you know, with lights on, sirens. Stuff
10:34:12 2 like that.

10:34:12 3 Q. What about when you're not driving
10:34:14 4 fast? Are police officers required to obey the
10:34:16 5 rules of the road?

10:34:17 6 A. Yes.

10:34:17 7 Q. All right. So if you're not in an
10:34:19 8 emergency situation, are you an ordinary driver
10:34:21 9 like everyone else?

10:34:22 10 A. Yes.

10:34:22 11 Q. Okay. No -- no exemptions, no -- you
10:34:27 12 don't have to obey a stop sign or you can go
10:34:30 13 through a red light if there's a nonemergency?

10:34:32 14 MS. HUGGINS: Form.

10:34:32 15 THE WITNESS: I believe we have an exception
10:34:35 16 regarding -- I believe we're allowed to use our
10:34:38 17 cell phones to make a call.

10:34:40 18 BY MR. RUPP:

10:34:40 19 Q. Okay. How about my question, though,
10:34:43 20 relates more to the operation of the vehicle
10:34:45 21 itself. I understand a cell phone is a -- is
10:34:47 22 a violation, so I appreciate that, but any -- any
10:34:50 23 vehicle and traffic rules or regulations or

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10:34:52 1 statutes that you're, like, allowed to violate
10:34:56 2 beyond that one as you're operating a vehicle in
10:34:58 3 a nonemergency situation?

10:34:59 4 **MS. HUGGINS:** Form. You may answer.

10:35:00 5 **THE WITNESS:** Not that I'm aware.

10:35:01 6 **BY MR. RUPP:**

10:35:02 7 **Q.** Okay. And just because there was
10:35:03 8 a form objection, are there any vehicle and traffic
10:35:07 9 laws other than cell phone usage while driving that
10:35:10 10 you are exempt from in a nonemergency situation?

10:35:12 11 **A.** I don't believe so.

10:35:14 12 **Q.** Okay. And you don't remember anything
10:35:16 13 from your training at ECC that said, you know,
10:35:18 14 don't worry about this, that doesn't apply to you?

10:35:20 15 **A.** Not that I remember.

10:35:21 16 **Q.** Okay. And what about the training you
10:35:22 17 received on the Tahoe that we discussed as part of
10:35:26 18 Exhibit 14, the Buffalo -- Buffalo Police Academy
10:35:29 19 training records?

10:35:31 20 Were -- were you taught or instructed that
10:35:33 21 there were any -- other than the cell phone, that
10:35:37 22 there were any vehicle and traffic statutes that
10:35:39 23 you didn't have to obey in a nonemergency

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10:35:41 1 situation?

10:35:41 2 **A.** I don't believe so.

10:35:42 3 **Q.** Okay. And what constitutes an -- an
10:35:44 4 emergency situation?

10:35:46 5 When is it that you do get to, you know,
10:35:51 6 I guess, for lack of a better term, violate the
10:35:55 7 vehicle and traffic law while you're engaged in
10:35:57 8 a high -- high-speed pursuit?

10:35:59 9 **MS. HUGGINS:** Form. You may answer.

10:36:01 10 **MR. RUPP:** Strike it.

10:36:02 11 What constitutes an emergency situation?

10:36:05 12 **THE WITNESS:** It would -- it would depend.

10:36:06 13 **BY MR. RUPP:**

10:36:06 14 **Q.** All right. Well, if -- if you are in
10:36:08 15 an emergency situation, would you activate your
10:36:12 16 warning lights on the patrol vehicle that you're
10:36:14 17 driving?

10:36:15 18 **A.** It would all depend on the situation.

10:36:17 19 **Q.** Okay. So can there be emergency
10:36:20 20 situations where you don't activate the -- the
10:36:24 21 warning lights on the vehicle but you consider
10:36:26 22 yourself to be exempt from the vehicle and traffic
10:36:28 23 laws?

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10:36:30 1 **A.** There are times where I'm going to
10:36:34 2 a call where I wouldn't necessarily want the siren
10:36:38 3 and -- because I don't want someone to hear when
10:36:41 4 I'm coming. Say a burglary in progress.

10:36:43 5 **Q.** Okay. Fair enough.

10:36:45 6 **A.** But we would still get there quickly.

10:36:48 7 **Q.** So other than those circumstances, if
10:36:50 8 you're going to be, for example, exceeding the
10:36:52 9 speed limit, will you always activate your siren?

10:36:55 10 **A.** No.

10:36:57 11 **Q.** Okay. So how do you -- how -- when is
10:36:59 12 it that you consider yourself to be exempt from
10:37:02 13 certain vehicle and traffic law statutes then?

10:37:06 14 What -- what is -- what is it in your
10:37:07 15 training or experience that tells you: I can speed
10:37:10 16 or I can go through a light or a stop sign? What
10:37:14 17 triggers that for you?

10:37:15 18 **MS. HUGGINS:** Form. You can answer.

10:37:18 19 **THE WITNESS:** So going through a light or
10:37:19 20 a stop sign, the lights would be activated.

10:37:21 21 **BY MR. RUPP:**

10:37:21 22 **Q.** Well, that's my point. So -- so
10:37:23 23 when -- when is it that you decide to activate the

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10:37:26 1 lights then?

10:37:28 2 **A.** Are you asking like is it -- are the
10:37:30 3 lights activated through my entire route from where
10:37:33 4 I am, to the emergency call?

10:37:34 5 **Q.** Well, I'm asking you, yeah, if you get
10:37:37 6 dispatched to an emergency call and you need to
10:37:38 7 speed to get there, do you activate your lights and
10:37:41 8 sirens?

10:37:41 9 **A.** Generally, yes.

10:37:42 10 **Q.** Okay. And you told me already about
10:37:44 11 instances where you -- you may not want to announce
10:37:49 12 that you're coming, and that might be -- are there
10:37:52 13 any other instances where you might be, for
10:37:55 14 example, exceeding the speed limit but you don't
10:37:57 15 activate your lights or sirens?

10:37:58 16 **MS. HUGGINS:** Form. You can answer.

10:38:00 17 **THE WITNESS:** Again, it would be
10:38:04 18 situational.

10:38:05 19 **BY MR. RUPP:**

10:38:06 20 **Q.** Well, what types of situations, other
10:38:07 21 than the one you mentioned where you don't want to
10:38:10 22 let a burglar in process know that you're coming,
10:38:13 23 that you might violate vehicle and traffic laws but

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10:38:17 1 wouldn't activate your lights and siren?

10:38:19 2 **A.** Well, lights and siren, I -- I kind of
10:38:21 3 keep those separate.

10:38:22 4 **Q.** Okay.

10:38:22 5 **A.** Because, again, siren -- you're not
10:38:26 6 necessarily driving to the entire call with your
10:38:28 7 siren blaring.

10:38:28 8 **Q.** Okay.

10:38:29 9 **A.** It would be generally the lights would
10:38:32 10 be on --

10:38:32 11 **Q.** Okay.

10:38:33 12 **A.** -- yes, if I'm speeding.

10:38:34 13 **Q.** All right. Are there any other reasons
10:38:35 14 why you would speed but not turn on your lights,
10:38:38 15 other than the one you mentioned?

10:38:39 16 **A.** There may have been times. I can't
10:38:41 17 think of an exact instance.

10:38:45 18 **Q.** Okay. All right. I want to ask you
10:38:57 19 some questions about some documents that maybe
10:38:59 20 you've already seen, but I'll go through some of
10:39:03 21 them.

10:39:03 22 Now, as a patrol officer with C District,
10:39:15 23 did you have a particular designation or an

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10:39:20 1 alphanumeric code that you referred to yourself as
10:39:23 2 when you radioed in something to headquarters or
10:39:27 3 dispatch?

10:39:27 4 **A.** Yes. We refer to them as call signs.

10:39:30 5 **Q.** Okay. And what was your call sign, as
10:39:32 6 of January 1 of 2017?

10:39:36 7 **A.** That day it was different because it
10:39:39 8 was double-up day.

10:39:40 9 **Q.** Ah, okay. So how does that work? What
10:39:43 10 was it normally?

10:39:45 11 **A.** I believe it was C, for Charlie, 232 or
10:39:52 12 233.

10:39:54 13 **Q.** Okay. So why would that change?
10:39:56 14 Or just out of curiosity, why didn't you have like
10:39:59 15 the same one that always referred to you?

10:40:01 16 **A.** Because on -- on our days off there's
10:40:04 17 other officers that have those same call signs, so
10:40:06 18 that's not my call sign that I hold on to. That --
10:40:10 19 it's shared with other officers.

10:40:11 20 **Q.** So you had to know each day what your
10:40:14 21 call sign was?

10:40:14 22 **A.** It would stay the same on my shift --

10:40:17 23 **Q.** Right.

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10:40:17 1 **A.** -- for -- for me, but on my days off,
10:40:19 2 it belonged to a different officer. So on
10:40:22 3 double-up days, it would be two people that
10:40:25 4 would have that call sign, so one of us would
10:40:28 5 get a different call sign.

10:40:28 6 **Q.** So on the double-up day that was
10:40:31 7 January 1 of 2017, you gave up your usual call sign
10:40:34 8 and went with one for that day.

10:40:36 9 **A.** Correct.

10:40:36 10 **Q.** And do you recall what that was?

10:40:38 11 **A.** I think it was -- it's -- it was either
10:40:41 12 241 or 242.

10:40:43 13 **Q.** Okay. And was Ms. Velez the other one
10:40:48 14 that you weren't?

10:40:49 15 **A.** Yes.

10:40:49 16 **Q.** Okay. So I believe you were C241 and
10:40:54 17 she was C242. Does that make sense to you?

10:40:56 18 **A.** Yes.

10:40:56 19 **Q.** Okay. But was that -- was hers also
10:41:01 20 a temporary?

10:41:01 21 **A.** Yes.

10:41:01 22 **Q.** For the double-up day.

10:41:04 23 **A.** Yes.

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10:41:04 1 **Q.** For the reasons you explained.

10:41:06 2 **A.** Yes.

10:41:06 3 **Q.** Okay. And so when would you use that
10:41:07 4 call sign? When you're on the radio or other
10:41:10 5 times? When would you use that call sign?

10:41:11 6 **A.** Yes, to communicate with radio.

10:41:13 7 **Q.** Okay. Any other reasons you would use
10:41:15 8 that call sign?

10:41:16 9 **A.** On paperwork.

10:41:17 10 **Q.** Okay. You would also refer to yourself
10:41:19 11 as that?

10:41:20 12 **A.** Yes.

10:41:20 13 **Q.** Okay. All right. Let me show you what
10:41:32 14 was previously marked as Exhibit 3. Plaintiff's
10:41:36 15 Exhibit 3. It's referred to as a complaint summary
10:41:40 16 report.

10:41:40 17 Do you -- do you recognize and have you seen
10:41:41 18 documents similar to this one?

10:41:42 19 **A.** Yes.

10:41:43 20 **Q.** All right. Now, it has a report date
10:41:44 21 of March 14, 2019. It looks like that might have
10:41:48 22 been the date it was printed out. Does that make
10:41:50 23 sense to you, if you know?

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10:41:55 1 **A.** I'm not sure where.

10:41:59 2 **Q.** Upper left, the date up there. I just

10:42:01 3 want to kind of --

10:42:02 4 **A.** Oh, did you -- I thought you said

10:42:04 5 March. September 25th?

10:42:09 6 **Q.** Oh, no. March 14, 2019.

10:42:11 7 Do you have the same one I have?

10:42:13 8 **A.** No.

10:42:13 9 **Q.** Oh. Well, then.

10:42:16 10 **MR. DAVENPORT:** So it's the same one except

10:42:17 11 it's a different print date --

10:42:17 12 **MR. RUPP:** All right.

10:42:19 13 **MR. DAVENPORT:** -- for when it came out.

10:42:20 14 **MR. RUPP:** Yeah. It looks like -- it looks

10:42:21 15 like it's the same report, a different report date.

10:42:26 16 All right. So disregarding the report date,

10:42:29 17 which postdates the incident that we're here to

10:42:33 18 talk about today, do you see that the other dates

10:42:35 19 appear to refer to January 1 of 2017?

10:42:35 20 **THE WITNESS:** Yes.

10:42:38 21 **BY MR. RUPP:**

10:42:38 22 **Q.** Okay. And if you could just navigate

10:42:40 23 me through that, it says -- on the right it says

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10:42:42 1 received by. There's a report that came in at
10:42:47 2 10:32:23 a.m., on January 1, 2017; is that right?

10:42:53 3 **A.** Yes.

10:42:54 4 **Q.** Okay. And it says it's received by --
10:42:59 5 it says it was received by 10:33:05. Do you know
10:43:06 6 what that means between reported and received?

10:43:07 7 **A.** That would be a dispatch 911 call taker.
10:43:12 8 I don't know the exact meaning of all of that.

10:43:14 9 **Q.** Fair enough. Okay.

10:43:15 10 And presumably Julianne Astyk 18773,
10:43:21 11 received by, would she be, to your knowledge,
10:43:24 12 somebody at dispatch?

10:43:25 13 **A.** She might be a 911 call taker. I don't
10:43:29 14 know.

10:43:29 15 **Q.** Okay. And then there's a reference to
10:43:34 16 dispatched, January 1, 2017, at 10:56:47 a.m.
10:43:39 17 Do you see that?

10:43:40 18 **A.** Yes.

10:43:40 19 **Q.** Okay. And there's a dispatched by,
10:43:43 20 there's another number, 000478, Kessler --
10:43:47 21 K-E-S-S-L-E-R, Joseph. Do you see that?

10:43:50 22 **A.** Yes.

10:43:50 23 **Q.** Do you recognize that name?

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10:43:51 1 **A.** Yes.

10:43:52 2 **Q.** Is -- is Joseph Kessler a dispatch

10:43:55 3 operator?

10:43:56 4 **A.** Yes.

10:43:56 5 **Q.** Is he an officer?

10:43:58 6 **A.** Dispatch.

10:43:58 7 **Q.** Dispatch officer?

10:43:59 8 **A.** No. I believe --

10:43:59 9 **Q.** Okay.

10:44:00 10 **A.** -- they're civilians.

10:44:02 11 **Q.** Civilians. Okay.

10:44:04 12 And then the source underneath that says

10:44:07 13 E-911. Is that Erie County 911 services?

10:44:10 14 **A.** I assume.

10:44:10 15 **Q.** Okay. But in any event, the -- the

10:44:15 16 information that's on the form that appears before

10:44:18 17 dispatched is -- is not really what -- what you

10:44:21 18 would be knowledgeable about or did as a patrol

10:44:23 19 officer back on January 1, 2017; is that right?

10:44:27 20 **A.** Correct.

10:44:28 21 **Q.** Okay. But -- but once -- once there's

10:44:30 22 a dispatch, is -- if you are the officer that

10:44:33 23 receives the call, you -- you could be dispatched

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10:44:35 1 at that time, correct?

10:44:37 2 **A.** Yes.

10:44:41 3 **Q.** Okay. And let me just ask you, if
10:44:43 4 we look at below, where it says remarks, there's
10:44:47 5 a identical time entry for -- that matches up with
10:44:51 6 the dispatched that says, 000478 -- that's
10:44:57 7 Mr. Kessler's number -- and it says en route, C230.

10:45:02 8 Do you know who was 230 on the day of the --
10:45:04 9 the incident?

10:45:04 10 **A.** Yes.

10:45:04 11 **Q.** And who was 230?

10:45:06 12 **A.** Karl Schultz and Kyle Moriarity.

10:45:09 13 **Q.** Okay. And were they -- did they have
10:45:11 14 the same call number, to your knowledge?

10:45:14 15 **A.** Kyle was in his field training.

10:45:17 16 **Q.** Okay.

10:45:18 17 **A.** So I believe it was Karl's call sign
10:45:23 18 and Kyle was his what we call a PPO.

10:45:27 19 **Q.** Okay. And so Mr. Schultz would be the
10:45:31 20 senior person who Mr. Moriarity is training with;
10:45:34 21 is that right?

10:45:34 22 **A.** Yes.

10:45:34 23 **Q.** Okay. All right. So 230 was

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10:45:38 1 dispatched, and apparently this is an incident
10:45:40 2 where they were dispatched to 33 Scharmbeck; is
10:45:45 3 that correct?

10:45:45 4 **A.** Schmarbeck.

10:45:45 5 **Q.** Schmarbeck.

10:45:46 6 And Schmarbeck is in C District, right?

10:45:48 7 **A.** Yes.

10:45:48 8 **Q.** And had -- you had patrolled Schmarbeck
10:45:51 9 before?

10:45:51 10 **A.** Yes.

10:45:51 11 **Q.** Were you familiar with -- with all of
10:45:53 12 the streets that made up C District?

10:45:55 13 **A.** Yes.

10:45:55 14 **Q.** Okay. Because at that point, you had
10:45:58 15 been an officer for about four and a half years,
10:46:01 16 right?

10:46:01 17 **A.** Correct.

10:46:01 18 **Q.** Okay. And you had probably been just
10:46:03 19 about everywhere in the district at that point.

10:46:05 20 **A.** Yes.

10:46:05 21 **Q.** Okay. Now, does this appear then, to
10:46:14 22 the best of your knowledge, to be the initial
10:46:20 23 dispatch record with respect to the -- the January

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10:46:24 1 1 incident that took place on Schmarbeck?

10:46:26 2 **A.** Yes.

10:46:34 3 **Q.** Okay. Let me show you what's been
10:46:36 4 marked Exhibit 4 for identification. Is yours two
10:46:38 5 pages? Okay.

10:46:41 6 **MR. DAVENPORT:** So that's --

10:46:42 7 **MR. RUPP:** Yeah. I think, Maeve, we had --
10:46:43 8 there is a second page to Exhibit 4. It's just
10:46:46 9 a couple of extra lines.

10:46:47 10 **MS. HUGGINS:** Yes.

10:46:48 11 **MR. RUPP:** With your permission, I would
10:46:50 12 suggest that we just make that -- you know, and
10:46:52 13 we'll have our stenographer record it -- a two-page
10:46:56 14 exhibit, by either remarking it -- maybe that's the
10:46:59 15 best way to do it -- as Exhibit 4 or swapping the
10:47:03 16 second page of this template copy to that.

10:47:06 17 **MS. HUGGINS:** I think that makes sense.

10:47:08 18 **MR. RUPP:** Okay.

10:47:08 19 **MS. HUGGINS:** I imagine you'll want to refer
10:47:11 20 to the second page with her.

10:47:12 21 **MR. RUPP:** All right. Fair enough.

10:47:13 22 So, Anne, we'll ask you, if you would
10:47:15 23 kindly, to mark that as Exhibit 4.

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10:47:17 1 **MS. HUGGINS:** "A," maybe?

10:47:17 2 **MR. RUPP:** What's that?

10:47:18 3 **MS. HUGGINS:** 4 -- 4A or 4 with today's

10:47:19 4 date? Whatever --

10:47:21 5 **MR. RUPP:** I think the record will be clear,

10:47:23 6 so I would just -- you can do 4 as today's date,

10:47:26 7 and I think we'll remember how that played out, but

10:47:28 8 I would just recommend that we just tear up that

10:47:31 9 copy.

10:47:33 10 **MS. HUGGINS:** Well, to the extent that

10:47:35 11 Officer Schultz referred to it during his

10:47:37 12 testimony.

10:47:37 13 **MR. RUPP:** That's fair. All right. So

10:47:38 14 let's make this 4A. We'll add the second page that

10:47:42 15 way.

16 **The following was marked for Identification:**

17 **EXH. 4A** **Buffalo Police complaint**

18 **summary report 17-0010506,**

19 **two pages**

20 **BY MR. RUPP:**

10:48:47 21 **Q.** Ms. McDermott, I'm showing you Exhibit

10:48:49 22 4A now, which is the same as 4, except it has the

10:48:54 23 second page. It's referred to as a complaint

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10:48:56 1 summary report.

10:48:57 2 And do you see the complaint summary report
10:48:59 3 refers to a criminal mischief incident that took
10:49:01 4 place at 37 Schmarbeck on January 1st, 2017?

10:49:09 5 Do you see that?

10:49:10 6 **A.** Yes.

10:49:10 7 **Q.** Okay. And can you tell me, what is --
10:49:13 8 what is a complaint summary report?

10:49:16 9 **A.** It's the call log is what we normally
10:49:19 10 refer to it as.

10:49:20 11 **Q.** All right.

10:49:23 12 **A.** Or a CAD call. C-A-D.

10:49:33 13 **Q.** All right. And there's a lot of
10:49:35 14 references to individual times and then sort of
10:49:38 15 code numbers next to them and then brief
10:49:42 16 descriptions of -- of what's going on. Is that
10:49:44 17 a fair assessment?

10:49:45 18 **A.** Yes.

10:49:45 19 **Q.** All right. So let's go through it
10:49:47 20 a little bit.

10:49:47 21 We saw some of the information up at the top
10:49:52 22 on the prior exhibit that had the incident number
10:49:59 23 of 0010496, which was initially a call of

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10:50:04 1 larceny/theft.

10:50:08 2 Do you see that?

10:50:10 3 **A.** On the 33 Schmarbeck?

10:50:12 4 **Q.** Yes.

10:50:13 5 **A.** Yes.

10:50:13 6 **Q.** Okay. And at some point it looks like

10:50:17 7 some of the information from the dispatch, the

10:50:21 8 report-received times that we went through with --

10:50:23 9 with Julianne Astyk -- that's A-S-T-Y-K -- and

10:50:28 10 Joseph Kessler were -- were picked up and put on

10:50:30 11 another report, bearing incident number 17-0010506,

10:50:37 12 at 37 Schmarbeck, not 33, for criminal mischief.

10:50:41 13 Do you see that? It seems to have been

10:50:43 14 converted?

10:50:43 15 **MS. HUGGINS:** Form. You can answer.

10:50:46 16 **THE WITNESS:** 33 Schmarbeck was --

10:50:48 17 **BY MR. RUPP:**

10:50:48 18 **Q.** Yes.

10:50:48 19 **A.** -- closed out.

10:50:49 20 **Q.** Okay.

10:50:49 21 **A.** And 37 was opened.

10:50:51 22 **Q.** Okay. But do you see that the

10:50:54 23 information on the report received, dispatched,

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10:50:56 1 en route, on seen, and cleared entries are, it
10:51:02 2 appears to be, identical between the two reports;
10:51:04 3 is that right?

10:51:07 4 Well, maybe they're not.

10:51:09 5 **A.** I'm not sure where you're referring.

10:51:10 6 **Q.** Oh, actually, they are different times.

10:51:16 7 Okay. So -- all right. So do you know when or
10:51:18 8 how the initial report of a larceny/theft at
10:51:23 9 33 Schmarbeck was changed to a criminal mischief at
10:51:26 10 37 Schmarbeck?

10:51:27 11 **A.** It wasn't changed.

10:51:29 12 **Q.** Okay. Or -- or, okay, it was added?

10:51:33 13 **A.** So I -- based on the 911 calls, which
10:51:36 14 we listened to yesterday, Karl and Kyle were
10:51:42 15 already on scene. They just hadn't called out to
10:51:46 16 dispatch that they were on scene for 33 Schmarbeck.

10:51:49 17 **Q.** Okay. And that's incident number

10:51:52 18 17-0010496?

10:51:53 19 **A.** Yes.

10:51:54 20 **Q.** Okay. So they hadn't called in yet; is
10:52:00 21 that -- is that what you said, Schultz and
10:52:02 22 Moriarity?

10:52:03 23 **A.** From the --

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10:52:03 1 **MS. HUGGINS:** Form.

10:52:04 2 **THE WITNESS:** From the time frame of this,
10:52:07 3 I don't believe so.

10:52:08 4 **BY MR. RUPP:**

10:52:08 5 **Q.** Okay. This, being Exhibit 3, right?

10:52:11 6 **A.** 3.

10:52:12 7 **Q.** Okay. Okay. And when is -- can you
10:52:16 8 tell from either exhibit when they may first have
10:52:18 9 called in?

10:52:23 10 **A.** I believe it was at 10:56:47, when it
10:52:27 11 was dispatched on Exhibit 3.

10:52:28 12 **Q.** Okay. That was when Moriarity and
10:52:34 13 Schultz called in or that was when they were
10:52:36 14 dispatched to 33 Schmarbeck?

10:52:39 15 **A.** Well, you could be dispatched one of
10:52:41 16 two ways. Dispatch could call you on the radio by
10:52:46 17 your call sign, you respond, and then they dispatch
10:52:49 18 a call.

10:52:49 19 You can also call out on your own and say
10:52:55 20 that you will take a call.

10:52:57 21 **Q.** All right. How would you know to call
10:52:59 22 out and say you'd take a call? Do you know that
10:53:02 23 one's come in?

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10:53:03 1 **A.** We have a computer in the car that
10:53:05 2 shows pending calls.

10:53:06 3 **Q.** I see. Okay.

10:53:07 4 So do you know which way the patrol vehicle
10:53:11 5 with Officers Schultz and Moriarity were dispatched
10:53:16 6 to, apparently, 33 Schmarbeck? Which -- which
10:53:19 7 method?

10:53:19 8 **A.** Based on the 911 call -- or I'm sorry.

10:53:23 9 Based on the -- I shouldn't say 911 call.

10:53:25 10 Based on the listening to the radio call,
10:53:30 11 Karl called out and said that they were -- that you
10:53:34 12 could clear the larceny advised is how -- our
10:53:38 13 verbiage that we use.

10:53:39 14 **Q.** Okay. And that would have been --

10:53:41 15 **A.** On -- excuse me.

10:53:42 16 **Q.** -- to use your prior terminology,
10:53:45 17 closed out the call log for the incident marked
10:53:47 18 as Exhibit 3?

10:53:48 19 **MS. HUGGINS:** Form. You may answer.

10:53:49 20 **THE WITNESS:** Yes.

10:53:50 21 **BY MR. RUPP:**

10:53:50 22 **Q.** Okay. Is there something I'm missing
10:53:53 23 there?

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10:53:53 1 If he says that's cleared, what would happen
10:53:55 2 on Exhibit 3?

10:53:57 3 A. That's when it was marked advised and
10:54:00 4 closed out.

10:54:00 5 Q. Okay. And where do I -- where do I see
10:54:03 6 the word advised?

10:54:05 7 A. On the second-to-last line.

10:54:06 8 Q. Okay. And that's a status that means
10:54:09 9 it's -- it -- it's no longer an active situation?

10:54:14 10 A. That's the disposition.

10:54:17 11 Q. Okay. What are some other dispositions
10:54:20 12 that you might see on a police -- a call log like
10:54:23 13 this?

10:54:23 14 A. There's a lot. It could be a report.

10:54:26 15 It could be checked okay. It could be -- there's
10:54:33 16 a lot of them, but there's -- those are just
10:54:35 17 a couple.

10:54:36 18 Q. Okay. But what does advised mean in --
10:54:39 19 in Buffalo Police terminology?

10:54:44 20 A. I don't think there's one exact answer
10:54:46 21 of what it means. It just means that they advised
10:54:50 22 the person on scene.

10:54:51 23 Q. Okay. All right. Now, so what about

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10:54:54 1 this Exhibit 3 would tell us that this one was --
10:54:57 2 was closed out?

10:54:58 3 I see at the bottom it says, you know,
10:55:02 4 disposition added advised, and then below that it
10:55:04 5 says archived.

10:55:05 6 If something is archived, does that mean
10:55:08 7 it's closed or --

10:55:09 8 **A.** Yes.

10:55:10 9 **Q.** Okay. So it's the archived status at
10:55:12 10 the bottom that tells us that this is no longer an
10:55:15 11 active call.

10:55:18 12 **A.** Right. We don't see that on our
10:55:20 13 computers in the car.

10:55:21 14 **Q.** Got it. Okay.

10:55:21 15 **A.** Advised would be the last thing that we
10:55:23 16 would see and then the call would literally close
10:55:26 17 from our computer.

10:55:27 18 **Q.** I see. Okay.

10:55:28 19 So that's something that happens at
10:55:30 20 dispatch.

10:55:30 21 **A.** Correct.

10:55:30 22 **Q.** Okay. All right. So let's -- let's
10:55:39 23 move now to Exhibit 4, and this is marked, up at

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10:55:41 1 the top, reported 10:54:42. Do you see that?

10:55:46 2 **A.** Yes.

10:55:47 3 **Q.** And based on your review for today's
10:55:48 4 deposition, do you know how that was reported as
10:55:50 5 a criminal mischief incident?

10:55:53 6 **MS. HUGGINS:** Form. You may answer.

10:55:55 7 **THE WITNESS:** Karl called it out over the
10:55:56 8 radio.

10:55:56 9 **BY MR. RUPP:**

10:55:57 10 **Q.** Okay. Was he the only one, or why was
10:55:59 11 Karl making the call?

10:56:07 12 **A.** I don't know why.

10:56:08 13 **Q.** Well, there's -- there's several
10:56:09 14 officers listed there under the bolded heading or
10:56:13 15 row lead officers. Do you see that?

10:56:18 16 **A.** Yes.

10:56:18 17 **Q.** All right. And it has listed --
10:56:20 18 there's a number -- and I'll get to that in
10:56:22 19 a moment, but Karl Schultz, Kyle Moriarity --
10:56:24 20 that's M-O-R-I-A-R-Y -- Lauren McDermott --
10:56:30 21 that's you -- and Jenny Velez; is that right?

10:56:33 22 **A.** Yes.

10:56:33 23 **Q.** Okay. And then other personnel are

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10:56:35 1 listed as Salvatore Polizzi -- P-O-L-I-Z-Z-I -- and
10:56:40 2 Edward Sauer -- S-A-U-E-R -- is that correct?

10:56:44 3 **A.** Yes.

10:56:44 4 **Q.** Do you know who Polizzi and Sauer are?

10:56:49 5 **A.** Polizzi is a 9 -- is a dispatcher.

10:56:51 6 **Q.** Okay.

10:56:52 7 **A.** I don't know Edward Sauer.

10:56:53 8 **Q.** Okay. Now, of the officers that

10:56:59 9 I mentioned in the line above just a moment ago,
10:57:01 10 which -- which officer was the most senior?

10:57:03 11 **A.** Karl.

10:57:03 12 **MS. HUGGINS:** Form.

10:57:04 13 **BY MR. RUPP:**

10:57:04 14 **Q.** Okay. And was there any police
10:57:09 15 procedure within the Buffalo Police Department that
10:57:12 16 related to who is in charge of a -- of a -- of a
10:57:16 17 call or a situation when multiple officers were
10:57:18 18 on site or on scene?

10:57:20 19 **A.** No.

10:57:20 20 **Q.** Okay. So do you know why it was Karl
10:57:24 21 Schultz who made the call in about the criminal
10:57:27 22 mischief?

10:57:28 23 **MS. HUGGINS:** Form. You can answer.

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10:57:30 1 **MR. RUPP:** Strike it.

10:57:30 2 Do you know if Karl made that call?

10:57:32 3 **THE WITNESS:** Yes, he did.

10:57:33 4 **BY MR. RUPP:**

10:57:33 5 **Q.** Okay. Why do you know that?

10:57:34 6 **A.** I was there.

10:57:35 7 **Q.** Okay. Did you hear him make the call?

10:57:40 8 **A.** I don't remember if I heard him.

10:57:42 9 I have listened to the dispatch tapes.

10:57:45 10 **Q.** Okay. And it was -- it was definitely
10:57:48 11 Officer Schultz.

10:57:49 12 **A.** Yes.

10:57:49 13 **Q.** Okay. And when you listened to the
10:57:51 14 tape, what did he report?

10:57:52 15 **MS. HUGGINS:** Form. To be fair, at what
10:57:54 16 time?

10:57:55 17 **MR. RUPP:** Well, I guess we're talking about
10:57:57 18 the initial -- there's a report -- let's -- let's
10:57:59 19 go back to the -- to the top of the form. There's
10:58:01 20 a reported January 1, 2017, 10:54:42. Do you know
10:58:07 21 what that relates to?

10:58:09 22 **THE WITNESS:** The -- I'm sorry. 10:54:42?

10:58:13 23 **BY MR. RUPP:**

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10:58:13 1 Q. Yes.

10:58:13 2 A. I believe that would be when Karl
10:58:15 3 called the call to --

10:58:18 4 Q. Okay.

10:58:18 5 A. -- radio.

10:58:20 6 Q. All right. And having listened to that
10:58:22 7 call, do you know what he told dispatch at that
10:58:23 8 time?

10:58:23 9 A. I don't know word for word. I think
10:58:25 10 when you said why, I -- he just happened to be the
10:58:28 11 one to use the radio to call.

10:58:30 12 Q. Okay.

10:58:31 13 A. It wasn't -- it wasn't --

10:58:32 14 Q. It could have been any of you.

10:58:35 15 A. Right. It could have been any of us.
10:58:36 16 It wasn't like -- it wasn't a discussion of: Karl,
10:58:38 17 you call radio. He just happened to call.

10:58:40 18 Q. All right. So it looks like at least
10:58:42 19 at some point that this was set up in dispatch as
10:58:45 20 a criminal mischief complaint at 37 Schmarbeck.

10:58:50 21 Do you see that?

10:58:50 22 A. Yes.

10:58:51 23 Q. Do you know where that information came

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10:58:53 1 from?

10:58:56 2 **A.** That was -- that was actually added
10:58:59 3 down at the bottom, at 1641 it was changed.

10:59:02 4 **Q.** All right.

10:59:03 5 **A.** I don't know what the initial input
10:59:06 6 was.

10:59:06 7 **Q.** Well, was the initial input, if you
10:59:09 8 look at 10:55:56, accident/injury, call type?

10:59:15 9 **A.** Oh, it could have been.

10:59:16 10 **Q.** Okay. And down at the bottom of the
10:59:19 11 entry that you mentioned, 16:41:22, call type
10:59:23 12 changed, criminal mischief, did you call that in?

10:59:29 13 **A.** I don't remember if it was myself or
10:59:32 14 Officer Velez. It -- it likely would have been one
10:59:35 15 of us.

10:59:35 16 **Q.** Okay. Because you were -- you were
10:59:37 17 still with Officer Velez at 16:41:22, which would
10:59:42 18 have been 4:41 p.m.; is that right?

10:59:44 19 **A.** Yes.

10:59:45 20 **Q.** Okay.

10:59:46 21 **A.** Can I make a clarification?

10:59:47 22 **Q.** Sure.

10:59:48 23 **A.** So when you see these multiple calls,

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10:59:52 1 what dispatch does is they do what we call merging.

10:59:55 2 Q. Right.

10:59:55 3 A. So they merge the calls together. So

10:59:58 4 when you say the reported time, I don't know if

11:00:01 5 that's when Karl called in, if that's when the

11:00:05 6 accident/injury came in. I -- I don't -- I wouldn't

11:00:07 7 know that.

11:00:07 8 Q. Okay. But if we go down to the -- the

11:00:13 9 body of the report, under where it says remarks,

11:00:17 10 let me just ask you a couple of things that I wasn't

11:00:20 11 clear on.

11:00:20 12 At 10:40 -- 54:42, which is the same time

11:00:24 13 that is in the above column as reported, there's

11:00:27 14 a location given, 1250 Bailey Avenue, and a phone

11:00:31 15 number.

11:00:32 16 And that looks like it was information that

11:00:33 17 came in from -- did that come in from Verizon

11:00:37 18 Wireless, as best you can tell?

11:00:39 19 A. Yes. That's the cell tower.

11:00:40 20 Q. Okay. All right. And do you know if

11:00:42 21 that was Officer Schultz's phone number?

11:00:47 22 A. I don't know --

11:00:48 23 Q. Okay.

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11:00:49 1 **A.** -- whose number that is.

11:00:50 2 **Q.** Okay. But is it -- presumably, whoever
11:00:52 3 reported it on January 1, 2017 at that time, that's
11:00:57 4 that person's phone number.

11:00:58 5 **A.** Yes. That matches -- I didn't see it
11:00:59 6 before. That matches the reported time up at the
11:01:02 7 top.

11:01:02 8 **Q.** Yes. Okay. So based on what you told
11:01:04 9 me earlier, I think you told me you believe that
11:01:06 10 that's most likely when Karl Schultz called.

11:01:09 11 **A.** I --

11:01:10 12 **MS. HUGGINS:** Form. You can answer.

11:01:11 13 **BY MR. RUPP:**

11:01:12 14 **Q.** If you know.

11:01:12 15 **A.** Yeah, it -- it -- it appears to be when
11:01:14 16 the -- a call came in. I --

11:01:18 17 **Q.** All right.

11:01:18 18 **A.** Like I said, the way that they merge
11:01:21 19 these calls together, it can be very confusing.

11:01:23 20 **Q.** Okay. But, presumably, we could
11:01:26 21 determine if that's Karl Schultz's phone number,
11:01:28 22 right?

11:01:28 23 **A.** I don't know --

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11:01:28 1 **MS. HUGGINS:** Form.11:01:29 2 **THE WITNESS:** I don't know -- I don't
11:01:31 3 believe it is, but I don't know what his number is
11:01:33 4 offhand.11:01:33 5 **BY MR. RUPP:**11:01:33 6 **Q.** You don't believe it is, so -- so does
11:01:35 7 that mean that you -- you no longer think that Karl
11:01:38 8 Schultz was the one who initiated the report at
11:01:40 9 that time?11:01:40 10 **A.** Like I said, I don't -- I think I may
11:01:44 11 have just misunderstood, because it looks like Karl
11:01:48 12 was dispatched at 10:57. That might be when he
11:01:51 13 called in.11:01:51 14 **Q.** Okay.11:01:52 15 **A.** Like I said, when they merge these
11:01:54 16 calls together, it doesn't necessarily -- like
11:01:57 17 I said, at the top it says criminal mischief.
11:02:00 18 I took that to be what it came in as, but I -- now
11:02:03 19 that you showed me where it shows call type
11:02:06 20 changed, accident with injury, that -- that could
11:02:09 21 have been the initial call. I don't know.11:02:10 22 **Q.** All right. And just -- maybe this will
11:02:12 23 help, maybe it won't, but at 11:03:52, there's**JACK W. HUNT & ASSOCIATES, INC.***1120 Liberty Building**Buffalo, New York 14202 - (716) 853-5600*

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11:02:16 1 another call from that cell tower through Verizon
11:02:20 2 from that same number.

11:02:21 3 Does that help in any way to identify whose
11:02:24 4 number that might have been or who might have made
11:02:25 5 that call or does it not?

11:02:26 6 **A.** I believe that would be attached to
11:02:28 7 right below it, where it says female requests
11:02:31 8 ambulance for injured 54-year-old boyfriend.

11:02:34 9 **Q.** Okay. So that might have been somebody
11:02:36 10 on Schmarbeck.

11:02:37 11 **A.** Right. Karl wouldn't have called
11:02:39 12 dispatch on his phone.

11:02:40 13 **Q.** He would not have.

11:02:40 14 **A.** Right.

11:02:42 15 **Q.** Okay. He would have radioed.

11:02:43 16 **A.** Would have radio -- well, he did radio.
11:02:45 17 We were there.

11:02:45 18 **Q.** And you heard it. And you heard it.

11:02:47 19 Okay. So let me just go back up to the top.
11:02:52 20 There's a reference from dispatch, 10:55:42, to
11:02:55 21 send an ambulance to 37 Schmarbeck in C District,
11:03:00 22 apparently, and then there's a priority of 6.
11:03:03 23 Do you know what that means?

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11:03:04 1 **A.** It's a priority of 6. That's -- yeah,

11:03:07 2 I --

11:03:07 3 **Q.** Okay. Do you know how the priorities
11:03:08 4 are selected? Is that all dispatch?

11:03:10 5 **A.** That's dispatch.

11:03:11 6 **Q.** You would not be involved. Okay.

11:03:12 7 So then it says call type changed to
11:03:18 8 accident/injury priority 2.

11:03:23 9 Now, is that call type, what appears next to
11:03:28 10 the incident number 17-0010506 that's at the top of
11:03:33 11 this form, it says criminal mischief, but at the
11:03:37 12 time, would that have been accident/injury?

11:03:40 13 **A.** It -- it appears that it was changed to
11:03:44 14 an accident with injury. What it was changed
11:03:47 15 from --

11:03:47 16 **Q.** We don't know?

11:03:48 17 **A.** -- that's what I don't know.

11:03:49 18 **Q.** Okay. Fair enough.

11:03:51 19 **A.** That's why I was a little bit confused
11:03:52 20 earlier.

11:03:52 21 **Q.** So going back to 3, just -- just really
11:03:54 22 quickly, the in -- the incident or the call type on
11:03:58 23 that one is larceny/theft. At least that's what it

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11:04:02 1 was when it was advised, right?

11:04:03 2 **A.** Yes.

11:04:03 3 **Q.** Okay. So when you get a call, it's
11:04:05 4 assigned a number in the system and then a call
11:04:08 5 type; is that right?

11:04:09 6 **A.** Yes. Where it says criminal mischief,
11:04:11 7 that would be what it was when the call was closed
11:04:15 8 out.

11:04:15 9 **Q.** Right. And so that was my next
11:04:17 10 question. So it could have -- up until that point,
11:04:19 11 it could have had as many as several different call
11:04:22 12 types before it's closed out or advised, right?

11:04:25 13 **A.** Correct.

11:04:25 14 **Q.** Okay. So based on this form, we don't
11:04:27 15 know what it was initially set up with in dispatch
11:04:31 16 under this incident number -- by this, I mean
11:04:33 17 17-0010506 -- but we know that when it was the
11:04:42 18 disposition of P1375 crime report was added and
11:04:49 19 then it was archived, we know its final call type
11:04:52 20 was criminal mischief.

11:04:54 21 **A.** Correct.

11:04:54 22 **Q.** Okay. And you've already pointed me to
11:04:57 23 someone calling at 16:41:22 or somebody putting in

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11:04:59 1 a call type change to criminal mischief.

11:05:02 2 **A.** That would be right above that, where
11:05:04 3 it says, can you please change this call to
11:05:06 4 criminal mischief, that would have been a message
11:05:09 5 on the computer to dispatch.

11:05:10 6 **Q.** Okay. And who entered that message on
11:05:12 7 this call. Do you know?

11:05:13 8 **A.** Myself or Officer Velez. It's the same
11:05:16 9 computer.

11:05:16 10 **Q.** Okay. And that is the computer HD01,
11:05:19 11 or --

11:05:20 12 **A.** No.

11:05:20 13 **Q.** -- what is that?

11:05:20 14 **A.** HD01 is -- it's the -- it's who we're
11:05:26 15 messaging on dispatch, so HD01 is assigned to our
11:05:30 16 radio channel.

11:05:31 17 **Q.** And prior to that call type being
11:05:34 18 changed through the computer like that, would --
11:05:38 19 would the call have continued to be on your screen
11:05:41 20 and open in your patrol vehicle?

11:05:44 21 **A.** Yes.

11:05:44 22 **Q.** Okay. And so you would have been able
11:05:46 23 to see that the call type was, unless there had

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11:05:51 1 been any other changes, presumably accident/injury
11:05:55 2 still. Or whatever it was.

11:05:56 3 **A.** I don't know what time frame I was in
11:05:59 4 or out of the car. At the time that I messaged,
11:06:03 5 I was in the car and changed it.

11:06:06 6 **Q.** Right, but --

11:06:06 7 **A.** I --

11:06:07 8 **Q.** -- what I'm saying is: Whether you're
11:06:08 9 in the car or not, if somebody is in the car
11:06:10 10 looking at the computer screen, presumably it would
11:06:13 11 have said the call type was accident/injury, up
11:06:15 12 until 4:41 p.m., when somebody through the computer
11:06:20 13 said it should be changed to criminal mischief,
11:06:22 14 right?

11:06:22 15 **MS. HUGGINS:** Form.

11:06:23 16 **THE WITNESS:** I believe so.

11:06:23 17 **BY MR. RUPP:**

11:06:24 18 **Q.** Okay. Because there don't seem to be
11:06:25 19 any other call type changes in the merged call log,
11:06:29 20 would you agree?

11:06:30 21 **A.** There is.

11:06:30 22 **Q.** Oh, did I miss one?

11:06:32 23 **A.** Well, here, right above -- it's the

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11:06:35 1 second-to-last line.

11:06:36 2 Q. Well, okay. Yeah.

11:06:37 3 A. I believe that was just a dispatch --

11:06:39 4 it's a drop-down menu.

11:06:41 5 Q. Okay. So call --

11:06:42 6 A. So it's in alphabetical order.

11:06:45 7 Q. All right. So --

11:06:45 8 MS. HUGGINS: Let him just finish his full
11:06:47 9 question.

11:06:47 10 THE WITNESS: I'm sorry.

11:06:48 11 MS. HUGGINS: Just for the benefit of the
11:06:48 12 reporter.

11:06:49 13 THE WITNESS: Sorry.

11:06:49 14 BY MR. RUPP:

11:06:49 15 Q. So where it says child neglect, I was
11:06:51 16 going to ask you about that. It does seem to say
11:06:54 17 child neglect, and then five seconds later it was
11:06:56 18 changed to criminal mischief; is that right?

11:06:56 19 A. Yes.

11:06:57 20 Q. So you think it was probably just an
11:06:59 21 inadvertent, like a typo on the pull-down menu?

11:07:01 22 A. That's what I assume it to be.

11:07:03 23 Q. Okay. Because this was never, in your

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11:07:05 1 mind, any type of a child neglect call.

11:07:06 2 **A.** Right.

11:07:07 3 **Q.** Okay. Fair enough.

11:07:09 4 All right. So, again, with that, you know,
11:07:12 5 five seconds that it was a child neglect call, does
11:07:15 6 it appear to you, from this merged call log, that
11:07:18 7 the incident remained an accident/injury call type
11:07:24 8 from 10:55 a.m., through until 4:41 p.m. that same
11:07:30 9 day?

11:07:32 10 **A.** That's what it appears to be.

11:07:33 11 **Q.** All right. And if -- and if
11:07:35 12 somebody -- I know you were in and out of the car,
11:07:37 13 but if somebody had been in your patrol vehicle
11:07:40 14 with access to your computer, that would have shown
11:07:42 15 as an open call, with a call type of accident/injury
11:07:46 16 during that time; is that right?

11:07:47 17 **A.** I believe so.

11:07:48 18 **Q.** Okay. I mean, it wouldn't have been
11:07:50 19 deleted during that time. You would have still
11:07:52 20 shown it -- it would have still shown on a C District
11:07:55 21 patrol vehicle computer, right?

11:07:56 22 **A.** I believe so.

11:07:57 23 **Q.** Okay. And then I think you told me

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11:07:59 1 earlier, in reference to Exhibit 3 and the initial
11:08:04 2 call to 33 Schmarbeck, that once dispatch puts
11:08:08 3 a final disposition on it and calls it archived, it
11:08:11 4 just kind of disappears from your computer; is that
11:08:14 5 right?

11:08:14 6 **A.** Right.

11:08:14 7 **Q.** Okay. Okay. So let's go through just
11:08:16 8 a couple more of these.

11:08:20 9 At 10:57:17, car C230, with Officer Schultz
11:08:28 10 and Moriarity, is en route to the scene; is that
11:08:32 11 right?

11:08:32 12 **MS. HUGGINS:** Form.

11:08:34 13 **THE WITNESS:** We were already on scene.

11:08:35 14 That's just how dispatch --

11:08:35 15 **BY MR. RUPP:**

11:08:35 16 **Q.** Okay.

11:08:37 17 **A.** -- logs it.

11:08:39 18 **Q.** All right. Fair enough.

11:08:40 19 And you say we. Was -- were you and -- and
11:08:44 20 Officer Velez also there by that time?

11:08:45 21 **A.** Yes.

11:08:46 22 **Q.** Okay. Because at 10:55, there's
11:08:51 23 a call -- there's a dispatch that comes in and

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11:08:53 1 there's a call that came in at 10:54 about a male
11:08:57 2 hit by a police car; is that right?

11:08:58 3 **A.** At 10:55:42.

11:09:01 4 **Q.** Right. Okay. So then the computer
11:09:03 5 shows you, C241, and Ms. Velez, C42, as being
11:09:12 6 dispatched/en route in that 10:57 time frame; is
11:09:17 7 that right?

11:09:17 8 **A.** Yes. We were on --

11:09:17 9 **Q.** But you --

11:09:18 10 **A.** We were on --

11:09:18 11 **Q.** But you -- but you were already there.

11:09:20 12 **A.** Yes.

11:09:21 13 **Q.** Okay. Then another call comes in.

11:09:24 14 All right. Now, at -- at 11 -- okay. Well, at

11:09:29 15 11:04:26, it says ADI notified, and what is ADI?

11:09:33 16 **A.** Ambulance.

11:09:34 17 **Q.** Okay. And do you know who summoned the
11:09:39 18 ambulance? Was that dispatch or --

11:09:42 19 **A.** I believe it was the call where -- the
11:09:45 20 line right above it, where it says she requested
11:09:47 21 the ambulance. Female requested the ambulance.

11:09:48 22 **Q.** Right. But then the entry under 8790,
11:09:52 23 it says ADI notified, do you know who would have

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11:09:57 1 put that in six seconds later?

11:10:00 2 **A.** It appears to be Edward Sauer. That's
11:10:02 3 his number.

11:10:02 4 **Q.** Okay. All right. So it looks like
11:10:07 5 dispatch ordered an ambulance to 37 Schmarbeck?

11:10:12 6 **A.** I believe so.

11:10:13 7 **Q.** Okay. And then 11:07:31, there's an
11:10:18 8 entry that looks like it was added by -- who is
11:10:26 9 000478? Is that Joseph Kessler?

11:10:28 10 **A.** Yes.

11:10:28 11 **Q.** It says, cameras on 37 has video of the
11:10:32 12 man flopping on the ground.

11:10:35 13 Do you know what that is in -- refers to?

11:10:38 14 **A.** I don't recall who would have -- he
11:10:43 15 typed it in the call. I don't recall who would
11:10:45 16 have communicated that. It could have been the
11:10:48 17 call -- the person calling 911. It could have been
11:10:50 18 one of us. But I didn't -- I don't recall hearing
11:10:53 19 that on the 911 calls when we reviewed it yesterday.

11:10:57 20 **Q.** Okay. Do you know what 37 refers to?
11:11:00 21 Is that -- 37 Schmarbeck is the address.

11:11:05 22 **A.** Yes.

11:11:06 23 **Q.** Okay.

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11:11:07 1 **A.** I --

11:11:08 2 **Q.** So had -- had you -- by 11:07 a.m., had
11:11:12 3 you ever -- had you seen any camera footage of
11:11:16 4 the -- of the actual collision of the -- of the
11:11:17 5 police car with the male?

11:11:19 6 **MS. HUGGINS:** Form.

11:11:19 7 **THE WITNESS:** No. I didn't see the camera
11:11:20 8 footage that day.

11:11:21 9 **BY MR. RUPP:**

11:11:21 10 **Q.** Okay. All right. Okay. So dispatch
11:11:24 11 you think would have added that remark from some
11:11:26 12 source of information; is that right?

11:11:28 13 **A.** Correct.

11:11:28 14 **Q.** Okay. All right. Now, just to
11:11:31 15 continue along, at 11:22 a.m., we have a location
11:11:35 16 change of the 230 -- C230 call sign, which I think
11:11:42 17 you told me was both Schultz and the trainee
11:11:44 18 Moriarity, correct?

11:11:45 19 **A.** Yes.

11:11:45 20 **Q.** And then you and Velez, C41 and C42,
11:11:50 21 are putting in a location change to ECMC; is that
11:11:54 22 right?

11:11:54 23 **A.** Yes.

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11:11:54 1 **Q.** And that was usually -- that was
11:11:56 2 accomplished by radio. You would radio in and say
11:11:59 3 you're -- you're going somewhere else or your
11:12:01 4 location has changed?

11:12:02 5 **A.** Yes. I believe Karl made that call.

11:12:04 6 **Q.** Okay. But my point is: Whoever made
11:12:06 7 it might have called in for maybe all three of you
11:12:09 8 or both vehicles, but it's done by radio.

11:12:12 9 **A.** Dis -- yeah, by dispatch.

11:12:13 10 **MS. HUGGINS:** Form.

11:12:14 11 **THE WITNESS:** Right.

11:12:15 12 **BY MR. RUPP:**

11:12:15 13 **Q.** Okay. I'm calling it radio, so that's
11:12:16 14 the communication --

11:12:16 15 **A.** We --

11:12:17 16 **Q.** -- with dispatch. You call it
11:12:18 17 dispatch?

11:12:18 18 **A.** We -- we call it radio.

11:12:20 19 **Q.** Okay.

11:12:20 20 **A.** But I -- that's just our term for it.

11:12:23 21 **Q.** Well, and I guess I'm -- okay. And
11:12:25 22 I'll use that term.

11:12:25 23 **A.** Okay.

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11:12:26 1 **Q.** But I'm kind of wanting to make sure
11:12:28 2 I'm distinguishing it from some other type of
11:12:30 3 communication, like through the computer or through
11:12:32 4 a cell phone or something.

11:12:33 5 This is radio to dispatch: My location is
11:12:35 6 changing. I'm going here.

11:12:37 7 **A.** Correct. Radio communications.

11:12:38 8 **Q.** Okay. Fair enough.

11:12:40 9 And would that location change happen when
11:12:43 10 you leave the scene of 37 Schmarbeck or when you
11:12:46 11 arrive at ECMC that you would do that or when
11:12:49 12 you're en route?

11:12:50 13 When would that happen?

11:12:51 14 **MS. HUGGINS:** Form. You can answer.

11:12:52 15 **MR. RUPP:** Strike it.

11:12:54 16 When would you normally make a location-change
11:12:57 17 call to dispatch when you're changing your location?

11:13:02 18 **THE WITNESS:** Normally it would be when we
11:13:03 19 were leaving the scene to go --

11:13:04 20 **BY MR. RUPP:**

11:13:04 21 **Q.** Okay.

11:13:05 22 **A.** -- to the location. It just depends on
11:13:07 23 when dispatch types it into the computer.

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11:13:09 1 **Q.** Fair enough. Okay.

11:13:10 2 And then the next line says, C230 will be
11:13:15 3 a 941.

11:13:16 4 That's Schultz and Moriarity's vehicle, and
11:13:19 5 941 refers to a mental health issue?

11:13:22 6 **A.** Yes.

11:13:22 7 **Q.** Okay. So what does that terminology
11:13:24 8 mean to you, C230 will be a 941?

11:13:29 9 **A.** Again, that's radio or dispatch.
11:13:31 10 That's their -- their verbiage typing it.

11:13:35 11 I don't --

11:13:38 12 **Q.** Okay. And then at 11:30:35, it says
11:13:43 13 C230, suspect broke mirror on car 473 intentionally.
11:13:49 14 Let me ask you about that. Was the car -- the
11:13:52 15 C District patrol vehicle that Schultz was driving,
11:13:54 16 was that C473?

11:13:56 17 **A.** No.

11:13:56 18 **Q.** Okay. Do you know what car 473 is? Is
11:14:01 19 that your car?

11:14:01 20 **A.** That's my vehicle.

11:14:02 21 **Q.** Okay. But does the C230 refer to
11:14:06 22 Schultz calling it in?

11:14:08 23 **A.** Yes.

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11:14:08 1 **Q.** Okay. And then dispatch evidently took
11:14:10 2 information and put that -- typed that into the
11:14:12 3 merged record, right?

11:14:13 4 **A.** Yes.

11:14:17 5 **Q.** Okay. Now, at 13:14, we have a --
11:14:19 6 we have a gap there from 11:30 a.m. to -- to
11:14:21 7 1:14 p.m. Almost two hours, right?

11:14:25 8 **A.** Yes.

11:14:26 9 **Q.** And then there's a reference from
11:14:28 10 dispatch, set to primary C241. Who had been
11:14:33 11 primary prior to you becoming primary?

11:14:35 12 **A.** Karl.

11:14:36 13 **Q.** Okay. And how do we know that from --
11:14:38 14 from this call log?

11:14:41 15 **A.** It's up at the 10:57:17, dispatched,
11:14:44 16 primary, C230.

11:14:46 17 **Q.** I see. Primary in parentheses. Okay.

11:14:49 18 So at that point, can you tell me, how did
11:14:52 19 you change to primary from -- from Karl Schultz, if
11:14:58 20 you recall from that day?

11:14:58 21 I'm not even -- I'm not even asking you from
11:15:00 22 the form. Like when -- when was it -- how did it
11:15:02 23 come about that you took over being primary on this

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11:15:06 1 17-0010506 call?

11:15:12 2 **A.** It was just a decision made that myself
11:15:15 3 and Officer Velez would take the call over.

11:15:18 4 **Q.** Okay. And where -- where were you when
11:15:20 5 that decision was made?

11:15:21 6 **A.** I don't remember.

11:15:22 7 **Q.** Okay. Based on the location changes
11:15:25 8 that are referenced on this call log, would that
11:15:27 9 have been at ECMC?

11:15:28 10 **A.** It's possible, but again, that's also
11:15:32 11 could just be that's when we communicated that
11:15:35 12 it -- it to radio. It wouldn't necessarily be
11:15:38 13 that's the moment that we decided that --

11:15:40 14 **Q.** Okay.

11:15:43 15 **A.** -- that's what would happen.

11:15:44 16 **Q.** Now, there doesn't seem to be any
11:15:46 17 location change for C230 after that change to you
11:15:56 18 as primary was made. Do you see that?

11:15:58 19 **A.** Yes.

11:15:58 20 **Q.** Okay. Do you know, once the change to
11:16:00 21 primary was made, was C230 kind of released from
11:16:03 22 this particular incident report?

11:16:05 23 **A.** I don't know at what time, but at -- at

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11:16:07 1 some point in time, Karl and Kyle went back into
11:16:09 2 service.

11:16:09 3 Q. Okay. And so you and -- and Ms. Velez
11:16:13 4 stayed with Mr. Kistner wherever you were at that
11:16:16 5 point.

11:16:16 6 A. Correct.

11:16:16 7 Q. So it was just the two officers at that
11:16:18 8 point; is that right?

11:16:19 9 A. Myself and Officer Velez.

11:16:21 10 Q. Yes. Yes.

11:16:22 11 A. Yes.

11:16:22 12 Q. Okay. So then the next entry, 14:45,
11:16:26 13 says C241 NMT. Do you know what that means?

11:16:29 14 A. It stands for need more time.

11:16:31 15 Q. Okay. And based on your location
11:16:33 16 changes as logged by dispatch, does it appear that
11:16:37 17 you were still at ECMC?

11:16:40 18 A. It appears, yes.

11:16:41 19 Q. Okay. And would the C241, need more
11:16:45 20 time, was that something you would have radioed
11:16:47 21 into dispatch or typed into your computer, or how
11:16:51 22 would they get that information?

11:16:52 23 A. One or the other. I don't recall which

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11:16:53 1 one.

11:16:54 2 Q. Okay.

11:16:54 3 A. Which -- -- which communication I used.

11:16:56 4 Q. Well, when you were at ECMC, you
11:16:58 5 weren't in your patrol vehicle, right?

11:17:01 6 A. I was not.

11:17:02 7 Q. Okay.

11:17:03 8 A. But that doesn't mean I wouldn't have
11:17:05 9 gone out to the car to get, say, paperwork or
11:17:07 10 something and could have messaged.

11:17:08 11 Q. Fair enough.

11:17:09 12 A. I don't recall.

11:17:09 13 Q. Fair enough.

11:17:10 14 All right. And so then at 1537, which is
11:17:15 15 3:37 p.m. -- and I'm sorry, what time did you tell
11:17:18 16 me your shift would normally be over?

11:17:19 17 A. At 4 p.m.

11:17:21 18 Q. 4 p.m. Okay.

11:17:23 19 So at -- at 3:50 -- 3:37 p.m., about
11:17:27 20 23 minutes before your shift would normally be
11:17:29 21 over, you, and then three seconds later, Officer
11:17:34 22 Velez, location changed. What is CB?

11:17:37 23 A. Central booking.

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11:17:38 1 **Q.** Okay. All right.

11:17:41 2 **A.** And --

11:17:42 3 **Q.** And then at -- go ahead.

11:17:43 4 **A.** I'm sorry. Or cell block is how we

11:17:45 5 sometimes refer to it as well.

11:17:47 6 **Q.** Fair enough. Either -- either acronym.

11:17:49 7 All right. Then at about -- oh, about

11:17:51 8 11 minutes later, it shows both of you as being

11:17:54 9 on scene presumably at cell block or central

11:17:57 10 booking; is that right?

11:17:57 11 **A.** Yes.

11:17:57 12 **Q.** Okay. Then we have another location

11:18:01 13 change about nearly an hour later, at -- at

11:18:05 14 4:36 p.m., it says your location has changed back

11:18:10 15 to ECMC; is that right? Both you and Officer

11:18:13 16 Velez?

11:18:13 17 **A.** Yes.

11:18:13 18 **Q.** Okay. I mean, they're consecutive

11:18:15 19 entries a few seconds apart, right?

11:18:17 20 **A.** Yes.

11:18:17 21 **Q.** Because you're driving together.

11:18:19 22 **A.** Correct.

11:18:19 23 **Q.** All right. So as long as it took

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11:18:21 1 dispatch to type in, you're both going, location
11:18:23 2 change, back to ECMC; is that right?

11:18:25 3 **A.** Yes.

11:18:25 4 **Q.** Okay. And then it shows you as being
11:18:27 5 en route.

11:18:31 6 Now, and then it puts you on scene at
11:18:35 7 4:46 p.m.; is that right?

11:18:42 8 On the second page?

11:18:44 9 **A.** Oh, yes. Yes.

11:18:46 10 **Q.** Okay. So, and that means on scene, as
11:18:48 11 you are now back at ECMC; is that right?

11:18:50 12 **A.** Yes.

11:18:50 13 **Q.** Because that's where your pending
11:18:52 14 location change was -- was put in a few minutes
11:18:54 15 before.

11:18:54 16 **A.** Yes.

11:18:55 17 **Q.** Okay. And now it looks like -- so does
11:18:57 18 this mean then that you are actually, you know,
11:19:00 19 driving?

11:19:00 20 When you do the location change, are you --
11:19:03 21 at 1641, are you and Officer Velez driving in the
11:19:09 22 patrol vehicle at that point?

11:19:12 23 **MS. HUGGINS:** Form. You can answer.

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11:19:13 1 BY MR. RUPP:

11:19:13 2 Q. Do you know?

11:19:14 3 Let me -- let me phrase the question

11:19:16 4 a little bit better.

11:19:17 5 You -- you radio in a location change.

11:19:19 6 A. Yes.

11:19:19 7 Q. You're heading back to ECMC; is that
11:19:21 8 right?

11:19:21 9 A. Yes.

11:19:21 10 Q. Okay. And dispatch says, you know,
11:19:25 11 you're immediately en route; is that right?

11:19:28 12 A. Yes.

11:19:28 13 Q. Okay. So four to five minutes -- five
11:19:32 14 to four minutes later, at 1641, there's another
11:19:36 15 entry: Can you please change this call to criminal
11:19:40 16 mischief? Do you see that?

11:19:41 17 A. Yes.

11:19:41 18 Q. Okay. And based on the times, if these
11:19:46 19 times are accurate, could you have gotten from
11:19:50 20 central booking to -- back to ECMC inside of five
11:19:55 21 minutes?

11:19:58 22 A. Probably not.

11:19:59 23 Q. Okay. So does that suggest to you that

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11:20:02 1 the dispatch was advised to change the call to
11:20:05 2 criminal mischief took place while you were
11:20:07 3 en route to ECMC the second time that day?

11:20:09 4 **A.** Since I was driving, I assume that
11:20:12 5 Officer Velez would have typed it, because it is
11:20:16 6 a message.

11:20:16 7 **Q.** Okay. And -- and I was going to ask
11:20:18 8 you that. I mean, throughout this whole day, were
11:20:20 9 you the driver of your patrol vehicle --

11:20:24 10 **A.** Yes.

11:20:24 11 **Q.** -- 473?

11:20:26 12 **A.** Yes.

11:20:26 13 **Q.** Okay. And how was it that you decided,
11:20:28 14 as between you and Officer Velez, which one of you
11:20:31 15 would drive that day?

11:20:32 16 **A.** I don't remember the exact conversation,
11:20:35 17 but we usually would trade on and off who would
11:20:38 18 drive.

11:20:38 19 **Q.** Fair enough. Okay.

11:20:39 20 All right. And then if we go to the end of
11:20:46 21 this document, the last few entries, we have you on
11:20:48 22 scene back at ECMC, C241. There's no reference to
11:20:54 23 C242, but she was with you, right?

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11:20:56 1 **A.** Yes.

11:20:56 2 **Q.** Okay. And then at what would have been
11:21:02 3 6:16 p.m., 18:16:08, the disposition is added
11:21:09 4 P1375 crime report; is that right?

11:21:13 5 **A.** Yes.

11:21:13 6 **Q.** And what does the P1375 refer to, if
11:21:16 7 you know?

11:21:16 8 **A.** It's what would be -- we generically
11:21:22 9 call a police report.

11:21:23 10 **Q.** Okay. And then that's -- that's the
11:21:24 11 end of the log because it gets archived literally
11:21:27 12 a second later; is that right?

11:21:28 13 **A.** Yes.

11:21:28 14 **Q.** And I think you told me that would
11:21:30 15 close it out on your computer, and you wouldn't --
11:21:32 16 you wouldn't see that again.

11:21:33 17 **A.** Correct.

11:21:34 18 **Q.** Okay.

11:21:43 19 **A.** Can we take a bathroom break?

11:21:45 20 **MR. RUPP:** Sure thing.

11:21:45 21 (A recess was then taken at 11:21 a.m.)

11:30:06 22 (On the record at 11:30 a.m.)

11:30:06 23 **BY MR. RUPP:**

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11:30:12 1 **Q.** All right. What I want to do now,
11:30:15 2 Ms. McDermott, is listen to a couple of the
11:30:19 3 dispatch radio calls that we were produced in
11:30:22 4 discovery by your attorney, Ms. Huggins. I'm just
11:30:26 5 going to play them and then maybe ask you a few
11:30:29 6 questions about them.

11:30:29 7 I'm not sure that all but the -- maybe the
11:30:32 8 last five don't pertain to you, but perhaps you can
11:30:35 9 tell me that you heard the call or know something
11:30:37 10 about it, so that's why I'm going to play those
11:30:39 11 as well.

11:30:39 12 So starting off with the first file, which
11:30:43 13 was produced as 01011701, so call 1.

11:30:59 14 **MS. HUGGINS:** And just for the sake of the
11:31:00 15 record, what -- what had we previously marked the
11:31:02 16 disc?

11:31:06 17 **MR. RUPP:** Exhibit 10.

11:31:07 18 **MS. HUGGINS:** Thank you.

11:32:03 19 (Audio clip played.)

11:32:03 20 **MS. HUGGINS:** Do we want to just go off the
11:32:05 21 record while we figure this out?

11:32:07 22 **MR. DAVENPORT:** Yeah.

11:32:07 23 (A recess was then taken at 11:32 a.m.)

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11:32:44 1 (On the record at 11:32 a.m.)

11:32:44 2 **MR. RUPP:** All right. The first one, 01,
11:32:47 3 which I hope is not Christmas music.

11:33:22 4 (Audio clip played.)

11:33:22 5 **BY MR. RUPP:**

11:33:22 6 **Q.** I'm going to stop it right there.

11:33:24 7 Does that sound like a 911 call coming in from an
11:33:28 8 individual, as opposed to a police officer?

11:33:30 9 **A.** Yes.

11:33:30 10 **MR. RUPP:** Okay. Let's play the second one.

11:33:34 11 This is from incident 010117, the second recording
11:33:39 12 produced by Ms. Huggins.

11:33:55 13 (Audio clip played.)

11:33:55 14 **BY MR. RUPP:**

11:33:56 15 **Q.** Now, do you know who Charlie 230 is?

11:33:58 16 **A.** Yes.

11:33:58 17 **Q.** Do you recognize that voice?

11:33:59 18 **A.** Yes.

11:33:59 19 **Q.** Is that Karl Schultz?

11:33:59 20 **THE WITNESS:** Yes.

11:34:09 21 (Audio clip played.)

11:34:09 22 **BY MR. RUPP:**

11:34:09 23 **Q.** Okay. And that's him telling dispatch

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11:34:12 1 that he is out on Schmarbeck with you and Jenny
11:34:14 2 Velez.

11:34:14 3 **A.** Yes.

11:34:14 4 **Q.** And presumably Officer Moriarity, but
11:34:16 5 he doesn't really have a status because he's
11:34:19 6 training.

11:34:19 7 **A.** Right.

11:34:20 8 **MR. RUPP:** Okay. Just wanted to confirm.

11:34:28 9 (Audio clip played.)

11:34:28 10 **BY MR. RUPP:**

11:34:28 11 **Q.** All right. So it says now it's going
11:34:30 12 to be 37 Schmarbeck. Did you hear him make this
11:34:34 13 call from the field?

11:34:37 14 **A.** I don't recall.

11:34:38 15 **Q.** Fair enough.

11:34:39 16 Do you know why he changed the street
11:34:41 17 address from 33 Schmarbeck to 37 Schmarbeck?

11:34:44 18 **A.** I think if you keep listening, it's
11:34:47 19 going to explain.

11:34:48 20 **MR. RUPP:** All right. Let's do that.

11:35:02 21 (Audio clip played.)

11:35:02 22 **BY MR. RUPP:**

11:35:03 23 **Q.** Okay. When the -- when it says 33 is

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11:35:04 1 advised, was that Officer Schultz saying that?

11:35:07 2 **A.** Yes.

11:35:07 3 **Q.** Okay. And that's saying close out the
11:35:10 4 incident that we previously talked about that's
11:35:11 5 Exhibit 3, right?

11:35:13 6 **A.** Correct.

11:35:14 7 **MR. RUPP:** Okay. And then he continues to
11:35:15 8 talk.

11:35:23 9 (Audio clip played.)

11:35:23 10 **BY MR. RUPP:**

11:35:23 11 **Q.** All right. So let me ask you about
11:35:25 12 that. He says, somebody threw himself into one of
11:35:27 13 our cars that was parked.

11:35:30 14 Do you know what he was referring to there?

11:35:31 15 **A.** Yes.

11:35:31 16 **Q.** What was he referring to?

11:35:33 17 **A.** He was referring to when Mr. Kistner
11:35:35 18 threw himself into my patrol vehicle.

11:35:37 19 **Q.** Okay. Was your car parked?

11:35:38 20 **A.** It was stopped.

11:35:39 21 **Q.** Okay. Was it -- was it parked?

11:35:40 22 **A.** It was not in park.

11:35:41 23 **Q.** Okay. Was it in motion?

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11:35:43 1 **A.** I didn't -- I don't believe so.

11:35:44 2 **Q.** Okay. You don't think it was moving
11:35:47 3 at the time?

11:35:47 4 **A.** I don't remember it being moving.

11:35:49 5 I -- I remember it being stopped.

11:35:50 6 **Q.** Okay. Did you -- before the impact do
11:35:54 7 you remember it being stopped?

11:35:56 8 **A.** I don't recall.

11:35:58 9 **Q.** All right. Well, do you -- did you
11:35:59 10 watch the videos as part of your preparation for
11:36:01 11 your deposition today?

11:36:02 12 **A.** Yes.

11:36:02 13 **Q.** Okay. And you watched them just
11:36:04 14 yesterday?

11:36:04 15 **A.** Yes.

11:36:04 16 **Q.** Okay. So based on what you saw
11:36:06 17 yesterday, was your vehicle parked or stopped
11:36:09 18 or moving at the time of the collision with
11:36:12 19 Mr. Kistner?

11:36:13 20 **MS. HUGGINS:** Form. You can answer.

11:36:14 21 **THE WITNESS:** I --

11:36:14 22 **BY MR. RUPP:**

11:36:15 23 **Q.** What was your vehicle doing at the

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11:36:17 1 precise moment that it impacted Mr. Kistner?

11:36:19 2 **A.** My vehicle didn't impact Mr. Kistner.

11:36:21 3 **Q.** Okay. Was there contact between your
11:36:24 4 vehicle and Mr. Kistner?

11:36:25 5 **A.** There was contact.

11:36:26 6 **Q.** Okay. And was your vehicle moving or
11:36:28 7 stationary at the time of that contact?

11:36:30 8 **A.** I recall it being stopped.

11:36:31 9 **Q.** You recall it being stopped. What did
11:36:34 10 you see yesterday in the videos?

11:36:35 11 **A.** It's hard to tell from the angle.

11:36:38 12 **MR. RUPP:** Okay.

11:36:43 13 (Audio clip played.)

11:36:43 14 **BY MR. RUPP:**

11:36:44 15 **Q.** Okay. And the ADI, you told me
11:36:46 16 previously, was the ambulance, right?

11:36:47 17 **A.** Yes.

11:36:47 18 **Q.** Okay. Do you know why Officer Schultz
11:36:50 19 told dispatch to disregard calls for the ambulance?

11:36:53 20 **MS. HUGGINS:** Form. You can answer.

11:36:54 21 **MR. RUPP:** Strike it.

11:36:54 22 What did he mean, if you can tell me, when
11:36:57 23 he said, disregard ADI?

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11:37:00 1 **THE WITNESS:** Disregard ADI would mean we do
11:37:03 2 not need an ambulance.

11:37:03 3 **BY MR. RUPP:**

11:37:03 4 **Q.** Okay. And how do you know -- did you
11:37:05 5 have a conversation with him before he radioed in
11:37:08 6 to call -- cancel the plans?

11:37:10 7 **A.** I don't recall.

11:37:10 8 **Q.** Okay. Do you know how he knew that --
11:37:13 9 that an ambulance was not needed?

11:37:15 10 **A.** I don't know.

11:37:16 11 **Q.** Okay. Do you know whether or not
11:37:18 12 Mr. Kistner was injured in the contact between
11:37:22 13 him and the police -- the police vehicle?

11:37:25 14 **A.** I believe he claimed to be injured.

11:37:30 15 **Q.** Okay. Did you believe him?

11:37:35 16 **A.** I did not.

11:37:36 17 **Q.** Did you receive any training in -- in
11:37:40 18 the course of your ECC training or your Buffalo
11:37:43 19 Police Academy training or on-the-job training with
11:37:46 20 respect to what you should do when somebody is --
11:37:48 21 is struck by a vehicle?

11:37:50 22 **A.** He was not struck by a vehicle.

11:37:51 23 **Q.** Okay. There was contact between him

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11:37:53 1 and your vehicle, right?

11:37:56 2 **A.** Yes, there was contact.

11:37:57 3 **Q.** Okay. Did you receive any training
11:37:58 4 as to what you're supposed to do under those
11:38:01 5 circumstances?

11:38:01 6 **A.** It would depend on the situation.

11:38:02 7 **Q.** Okay. If the person says they're
11:38:05 8 injured and wants an ambulance, what are you
11:38:07 9 trained to do?

11:38:07 10 **A.** It would depend on the situation.

11:38:08 11 **Q.** Okay. So how -- what -- how would it
11:38:10 12 depend? What -- what would -- if somebody wanted
11:38:12 13 an ambulance, what would cause you to cancel an
11:38:14 14 ambulance?

11:38:15 15 **A.** I didn't cancel the ambulance.

11:38:16 16 **Q.** Okay. Well, have you canceled
11:38:19 17 ambulances before?

11:38:20 18 **A.** Yes.

11:38:20 19 **Q.** Okay. What would cause you to cancel
11:38:22 20 an ambulance when somebody said, I want an
11:38:24 21 ambulance?

11:38:25 22 **A.** Again, it would depend on the
11:38:26 23 situation.

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11:38:26 1 **Q.** Okay. How would it depend?

11:38:28 2 **A.** It would depend on if we transported
11:38:31 3 them up to the hospital ourselves.

11:38:33 4 **Q.** Okay.

11:38:33 5 **A.** That's another option.

11:38:34 6 **MR. RUPP:** All right.

11:38:42 7 (Audio clip played.)

11:38:42 8 **BY MR. RUPP:**

11:38:42 9 **Q.** All right. He says, okay. I'll get
11:38:44 10 ADI there.

11:38:45 11 Who was that speaking?

11:38:46 12 **A.** Dispatcher.

11:38:46 13 **Q.** Okay. ADI is an ambulance, right?

11:38:49 14 **A.** Yes.

11:38:49 15 **Q.** So at this point, based on this call
11:38:52 16 that came over I assume your radio, as well as Karl
11:38:55 17 Schultz's, right?

11:38:56 18 **A.** Yes.

11:38:56 19 **Q.** You would have heard it too?

11:38:57 20 **A.** Yes.

11:38:57 21 **Q.** According to that, dispatch is sending
11:38:59 22 an ambulance, right?

11:39:01 23 **A.** I believe he misunderstood when Karl

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11:39:04 1 said to cancel the ambulance.

11:39:05 2 **MR. RUPP:** Okay.

11:39:10 3 (Audio clip played.)

11:39:10 4 **BY MR. RUPP:**

11:39:10 5 **Q.** Okay. And so now Karl Schultz is
11:39:12 6 making it clear: I don't want an ambulance to come
11:39:14 7 to the scene. Is that right?

11:39:15 8 **A.** Correct.

11:39:16 9 **Q.** Okay. Did you observe Mr. Schultz make
11:39:19 10 an assessment of whether or not Mr. Kistner was
11:39:21 11 injured?

11:39:22 12 **A.** I would have been there. I don't
11:39:24 13 recall the exact assessment that was made.

11:39:26 14 **Q.** Okay. Well, my question is: Was an
11:39:28 15 assessment made?

11:39:29 16 **A.** Yes.

11:39:29 17 **Q.** Okay. How do you know that?

11:39:31 18 **A.** I would have been standing there.

11:39:33 19 **Q.** Okay. Well, you're saying, would have
11:39:34 20 been, as if you're almost referring to somebody
11:39:37 21 else.

11:39:37 22 I mean, did you -- do you recall, as you sit
11:39:39 23 here today, watching Mr. Schultz make an assessment

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11:39:42 1 of whether or not Jim Kistner was injured?

11:39:44 2 **A.** I was standing there. I'm saying
11:39:46 3 I don't recall the exact assessment that was made.

11:39:48 4 **Q.** Okay. Do you know how long the
11:39:50 5 assessment took?

11:39:50 6 **A.** No.

11:39:51 7 **Q.** Do you know if he asked Mr. Kistner any
11:39:54 8 questions?

11:39:54 9 **A.** I don't remember.

11:39:55 10 **Q.** Okay. You have no recollection of
11:39:57 11 and -- and you didn't perform an assessment; is
11:39:59 12 that right?

11:39:59 13 **A.** I -- there was a visual assessment made
11:40:03 14 that didn't appear to be any outward injuries.
11:40:06 15 There was -- he wasn't bleeding. Nothing like
11:40:08 16 that.

11:40:08 17 **Q.** Okay. You wouldn't necessarily see,
11:40:10 18 like a back injury, though, it wouldn't be
11:40:14 19 manifested with blood; would you agree with that?

11:40:16 20 **A.** A back injury could be manifested with
11:40:18 21 blood.

11:40:18 22 **Q.** But not necessarily, right?

11:40:19 23 **A.** Not necessarily.

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11:40:20 1 **Q.** Okay. What about -- what about
11:40:23 2 a spinal cord injury?

11:40:24 3 **A.** I'm not a medical professional.

11:40:25 4 **Q.** Okay. So what -- what was the extent
11:40:27 5 of your assessment of Mr. Kistner?

11:40:29 6 **A.** My assessment was that he purposely
11:40:32 7 walked towards the vehicle and threw himself into
11:40:34 8 it.

11:40:34 9 **Q.** Okay. But what was your assessment of
11:40:36 10 whether or not he was injured from that?

11:40:38 11 **A.** Again, I'm not a medical -- medical
11:40:41 12 professional. I did not see -- visually see any
11:40:44 13 injuries.

11:40:44 14 **Q.** Okay. Did anybody else do an
11:40:46 15 assessment?

11:40:46 16 You said you were there when Mr. Schultz did
11:40:49 17 one, but you're not sure what he did. You did one.
11:40:52 18 Did anybody else do an assessment?

11:40:54 19 **A.** As far as a visual assessment?

11:40:56 20 **Q.** Any type of assessment.

11:40:57 21 **A.** You would have to ask the other
11:41:00 22 officers that were there.

11:41:00 23 **Q.** Okay. All right.

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11:41:01 1 Did you overhear any questions asked of
11:41:04 2 Mr. Kistner as to whether he was injured or not?
11:41:06 3 **A.** I don't recall.
11:41:06 4 **Q.** Okay. And you don't recall asking any
11:41:09 5 yourself?
11:41:09 6 **A.** I don't recall.
11:41:10 7 **Q.** Do you recall speaking to Mr. Kistner
11:41:12 8 at all before, for example, he was handcuffed?
11:41:18 9 **A.** I may have.
11:41:18 10 **Q.** When you first saw Mr. Kistner, where
11:41:20 11 was he?
11:41:20 12 **A.** On the ground.
11:41:21 13 **Q.** Okay.
11:41:21 14 **MS. HUGGINS:** Form.
11:41:23 15 **THE WITNESS:** Well, yeah. Sorry. First
11:41:25 16 saw --
11:41:25 17 **BY MR. RUPP:**
11:41:25 18 **Q.** Let's say after the impact with the
11:41:26 19 police vehicle, where was he?
11:41:27 20 **A.** On the ground.
11:41:28 21 **Q.** Okay. Was he on his back? Side?
11:41:31 22 Front?
11:41:31 23 **A.** I believe he was rolling. I don't

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11:41:34 1 recall if he was on his stomach or back first, but
11:41:37 2 he was kind of rolling on the ground.

11:41:39 3 Q. Okay.

11:41:40 4 A. From side to side.

11:41:41 5 Q. Did you hear an impact in your -- in
11:41:43 6 your police vehicle or patrol vehicle?

11:41:49 7 A. I don't recall.

11:41:50 8 Q. All right. Well, how did you know that
11:41:52 9 there had been physical contact between Mr. Kistner
11:41:56 10 and your patrol vehicle?

11:41:58 11 A. I saw it.

11:41:59 12 Q. Okay. What did you see?

11:42:01 13 A. I saw him walking towards my vehicle
11:42:05 14 very fast or quickly, and he didn't stop.

11:42:11 15 Q. Okay. And you don't remember whether
11:42:14 16 you were stationary or moving yourself in the
11:42:18 17 patrol vehicle.

11:42:19 18 A. Prior to him making contact, I was
11:42:23 19 trying to drive away. As he kept coming, I slammed
11:42:26 20 on the brakes.

11:42:28 21 Q. Okay. Had you seen him before you
11:42:31 22 slammed on the brakes?

11:42:34 23 A. Prior --

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11:42:35 1 **MS. HUGGINS:** Form.

11:42:35 2 **BY MR. RUPP:**

11:42:36 3 **Q.** Did you see him walking towards the
11:42:37 4 front of your vehicle?

11:42:38 5 **A.** He was walking towards the side of it.

11:42:40 6 **Q.** Okay. Did -- when did you see him?
11:42:43 7 How long -- how -- what time frame before the
11:42:45 8 impact did you see him?

11:42:48 9 **A.** I -- I don't know about time frame.

11:42:50 10 I saw him walking from -- I believe from his house,
11:42:53 11 down the sidewalk.

11:42:54 12 **Q.** Okay. And did you see him walk into
11:42:56 13 the street?

11:42:56 14 **A.** Yes.

11:42:56 15 **Q.** Did you see him walk past the front of
11:43:00 16 your vehicle?

11:43:01 17 **A.** No. He walked --

11:43:03 18 **Q.** Okay.

11:43:03 19 **A.** -- in front of Karl and Kyle's vehicle.
11:43:06 20 He walked to the opposite side of the street where
11:43:09 21 he was coming from.

11:43:10 22 **Q.** Did you hear Mr. Kistner say anything?

11:43:12 23 **MS. HUGGINS:** Form.

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11:43:13 1 **THE WITNESS:** I don't recall.

11:43:13 2 **BY MR. RUPP:**

11:43:14 3 **Q.** Okay. Did you hear Officer Schultz or

11:43:17 4 Officer Moriarity say anything?

11:43:18 5 **A.** I don't recall.

11:43:19 6 **Q.** Okay. Did you say anything?

11:43:21 7 **A.** I don't believe so.

11:43:22 8 **Q.** Did Ms. Velez say anything?

11:43:24 9 **A.** I don't believe so.

11:43:25 10 **Q.** Okay. So as far as you know, as you
11:43:27 11 sit here today, you didn't hear anyone say anything
11:43:29 12 as Mr. Kistner was making his way across the street?

11:43:32 13 **A.** I don't recall.

11:43:33 14 **Q.** Okay. But you saw him walking towards
11:43:35 15 your vehicle.

11:43:37 16 **A.** I saw him walking -- yes, I saw him
11:43:40 17 walking towards the side of the vehicle.

11:43:41 18 **Q.** Okay. And was your window -- you were
11:43:43 19 driving.

11:43:44 20 **A.** Yes.

11:43:44 21 **Q.** Was your window up or down?

11:43:46 22 **A.** I don't recall.

11:43:47 23 **Q.** Okay. Well, it was January 1 of 2017.

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11:43:50 1 Does that refresh your recollection at all or
11:43:52 2 whether your window would be up or down or you just
11:43:55 3 don't know?

11:43:55 4 **A.** I don't remember.

11:43:56 5 **Q.** Okay. Was Ms. Velez in the vehicle
11:43:59 6 as well?

11:43:59 7 **A.** Yes.

11:43:59 8 **Q.** And do you know whether she was looking
11:44:01 9 at Mr. Kistner?

11:44:02 10 **A.** I don't recall.

11:44:03 11 **Q.** Did she say anything to you before the
11:44:05 12 impact?

11:44:06 13 **A.** I don't recall.

11:44:07 14 **Q.** Did you say anything to her?

11:44:08 15 **A.** I don't recall.

11:44:09 16 **Q.** And you didn't hear anybody call out
11:44:11 17 a warning or say anything.

11:44:13 18 **A.** No.

11:44:13 19 **Q.** Okay. What were you intending to do if
11:44:23 20 the collision or if the impact had not happened?

11:44:27 21 **MS. HUGGINS:** Form.

11:44:27 22 **BY MR. RUPP:**

11:44:28 23 **Q.** You're in your vehicle now with

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11:44:29 1 Ms. Velez, right?

11:44:31 2 **A.** Correct.

11:44:31 3 **Q.** Officer Schultz and Moriarity have left
11:44:34 4 in their patrol vehicle, correct?

11:44:36 5 **A.** They had started to drive away.

11:44:38 6 **Q.** Right. They were in motion at the time
11:44:39 7 of the impact, right?

11:44:43 8 **A.** I don't know if they were in motion or
11:44:44 9 if they had stopped down the street.

11:44:45 10 **Q.** Okay. Do you know where they were
11:44:48 11 going?

11:44:48 12 **A.** I don't.

11:44:49 13 **Q.** Okay. And what were you planning to do
11:44:52 14 with Ms. Velez in the passenger seat?

11:44:55 15 **A.** We were leaving the scene.

11:44:57 16 **Q.** Okay. You were planning to leave.

11:44:58 17 **A.** Yes.

11:44:58 18 **Q.** Okay. And which way were you planning
11:45:00 19 to leave on Schmarbeck?

11:45:02 20 **A.** The direction our vehicle was facing.

11:45:05 21 I believe north.

11:45:07 22 **Q.** So your plan was to pull forward down
11:45:10 23 Schmarbeck and go where you were going to go next;

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11:45:12 1 is that right?

11:45:12 2 **A.** Correct.

11:45:13 3 **Q.** You weren't going to turn around in
11:45:14 4 a driveway or turn around, make a three-point turn
11:45:17 5 in the street or anything.

11:45:18 6 **A.** No.

11:45:18 7 **Q.** Okay. And when you -- when you saw
11:45:23 8 Mr. Kistner, did you stop?

11:45:28 9 When you saw him coming, you said approaching
11:45:30 10 the side of your vehicle, what did you do?

11:45:33 11 **A.** No. I was trying to pull out of where
11:45:35 12 I was parked.

11:45:36 13 **Q.** Okay. Had you started pulling out yet?

11:45:38 14 **A.** Yes.

11:45:38 15 **Q.** Okay. So you were moving?

11:45:41 16 **MS. HUGGINS:** Form.

11:45:41 17 **THE WITNESS:** I had backed up, and I had
11:45:44 18 turned the wheel and started to pull around I think
11:45:47 19 it was a red minivan that was parked there.

11:45:49 20 **BY MR. RUPP:**

11:45:49 21 **Q.** When -- when you backed up, where were
11:45:52 22 you looking?

11:45:54 23 **A.** I -- I don't -- I don't recall.

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11:45:56 1 **Q.** Well, when you were trained to drive
11:45:59 2 a Tahoe and the training you received on the Crown
11:46:02 3 Vic at ECC, what were you trained to do when you
11:46:05 4 backed up a patrol vehicle?

11:46:05 5 **A.** Well, I would have -- there's no
11:46:07 6 rearview mirror camera, so I would have looked
11:46:10 7 in both mirrors. I would have turned around and
11:46:13 8 looked.

11:46:13 9 **Q.** What about rear view?

11:46:15 10 **A.** Rearview mirror?

11:46:16 11 **Q.** Yes. You had one.

11:46:17 12 **A.** I would have looked in it.

11:46:18 13 **Q.** Okay. So you backed up. How many feet
11:46:21 14 did you back up?

11:46:22 15 **A.** I don't know exactly.

11:46:23 16 **Q.** We'll look at the video, but why did
11:46:26 17 you back up? Why didn't you pull straight forward?

11:46:27 18 **A.** Because there was a red minivan parked
11:46:29 19 there, and I was -- would have been too close to
11:46:30 20 pull straight forward out.

11:46:30 21 **Q.** So you needed to back up and you're
11:46:32 22 checking mirrors; is that right?

11:46:33 23 **A.** Yes.

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